Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

Raymond Obiajulu,
Petitioner/Plaintiff,

v.

Professional, Clerical And Miscellaneous Employees, Teamsters Local Union No. 995, And Glenda Bassler-Watson,
Respondents/Defendants.

Raymond Obiajulu,
Petitioner/Plaintiff,

v.

RITE AID Corporation, a Delaware Corporation; Tamara Molina, an individual, in her official and individual capacity; Alan Keel, an individual, in his official and individual capacity,
Respondents/Defendants.

On Petition For Writ Of Certiorari
To The U.S. Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

RAYMOND OBIAJULU
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PH/FAX: 702-233-4248
Pro Se Petitioner/Plaintiff

QUESTIONS PRESENTED

1. Did Teamsters Local Union 995 (the Union) act arbitrarily when it neglected my rights under the Collective Bargaining Agreement (CBA) in processing the grievance I filed right after my employer, Rite Aid, issued a suspension discipline to me after I purchased twenty (20) plastic resin chairs at Rite Aid store #6271, in preparation for the condolence visit my friends wanted to pay to my family for the death of my mother?

2. Did the Union act arbitrarily when it suddenly reversed its original position regarding the suspension discipline, without any reason, and sided with Rite Aid?

3. Did the Union act arbitrarily when it disposed of the grievance without giving me any reason?

4. Did the Union breach its Duty of Fair Representation owing to me when it failed to investigate the grievance before disposing of it?

5. Did the Union breach the Duty of Fair Representation it owed to me when it disregarded the terms of the CBA in processing the grievance?

6. Did the Union breach the Duty of Fair Representation it owed to me when it discarded the grievance without giving me any reason for its action?

7. Was the Union's conduct discriminatory, arbitrary, and in bad faith when it deviated from its usual and customary practice and processed the suspension grievance through the Board of Adjustment (BOA), a step never taken before by the Union?

8. Was the Union's action discriminatory against me and perfunctory when it took the grievance through

the BOA step it has never taken any grievance before, just to dispose of it?

9. Did the Union discriminate against me when it refused to take my case through final and binding arbitration, like it had done for other Rite Aid employees/union members before me?

10. Was the Union's conduct perfunctory, arbitrary and in bad faith when it recklessly disregarded the welfare of my family which lost health insurance while the Union was handling the grievance resulting from the discipline?

11. Did the Union breach the Duty of Fair Representation it owed to me when it suddenly sided with the employer despite lack of *just cause*, as contained in its original position letter to Rite Aid?

12. Did the Union act arbitrarily when it conspired with Rite Aid to deny me my rights under the CBA?

13. Did the Union discriminate against me when it refused to extend to me the same benefits of processing my grievance in accordance with the provisions of the CBA, as enjoyed by other white employees and union members.

14. Did Rite Aid discriminate against me when it refused to extend to me the same benefits and privileges of making purchases at Rite Aid, as enjoyed by other white employees and non-employee citizens?

15. Did Rite Aid discriminate against me when it disciplined only me and not the other two (2) white employees involved in the resin chairs purchase?

16. Did the lower court abuse its discretionary power by denying me the opportunity to conduct any depositions of the defendants, or witnesses?

17. Was it contrary to law when the Courts denied me extension of the discovery period that was timely filed, and good cause shown, when it had granted same to the defendants previously?

18. Was it contrary to law and a conflict of interest for Magistrate judge Robert J. Johnston to preside over a case he had vested interest in, only to recuse himself after my case went to Appeal, and after he had repeatedly ruled in favor of my opponents?

    Furthermore, was it contrary to law for the Appeals court to refuse to consider the bias of a Judge's Order favoring the law firm where the Judge's longtime family friend and former baby-sitter is an attorney of counsel?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
LIST OF PARTIES iv
INDEX TO APPENDICES vi
TABLE OF AUTHORITIES vii
STATUTES AND RULES viii
PETITION FOR WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2-4
STATEMENT OF THE CASE 5-12
ARGUMENT 12-24
REASONS FOR GRANTING THE WRIT 24-29
CONCLUSION 30

INDEX TO APPENDICES

APPENDIX A.....	Opinion of the United States Court of Appeals for the Ninth Circuit
APPENDIX B.....	Opinion of the United States District Court for the District of Nevada
APPENDIX C.....	Collective Bargaining Agreement (CBA)
APPENDIX D.....	Settlement And Release Agreement
APPENDIX E.....	Written Discipline
APPENDIX F.....	My Letter to the Union to Excuse itself.
APPENDIX G.....	Union's Letter of 02/05/04 to Rite Aid.
APPENDIX H.....	Union's Letter of 02/23/04 to Rite Aid
APPENDIX I.....	Union's Answer Regarding BOA
APPENDIX J.....	Rite Aid's Policy on 20% Employee Discount
APPENDIX K.....	Acknowledgment Receipt.
APPENDIX L.....	My Letter to Union Requesting BOA Decision
APPENDIX M.....	Union's Letter to me Regarding BOA Decision.
APPENDIX N.....	BOA Decision Letter
APPENDIX O.....	Union's Newsletter Regarding Another Member's Grievance.

TABLE OF AUTHORITIES CITED

Cases **Page(s)**

Adickes v. S. H. Kress & Co. 26

Airline Pilots Ass'n v. O'Neil 15

Bliesner v. Communication Workers of America 12, 17

Chuang v. University of California Davis, Bd. Of Trustees 19, 24

Dutrisac v. Caterpillar Tractor Co. 17

Lynn v. Sheet Metal Workers Int'l Ass'n 27

Martinez v. City of Los Angeles 26

McDonnell Douglas v. Green 21

Patterson v. Int'l Brotherhood of Teamsters 12

Slevira v. Western Sugar Co. 17

Vaca v. Sipes 14

Vasquez v. County of Los Angeles 21

Wallis v. J. R. Simplot Co. 19

STATUTES AND RULES

Labor Management Relations Act of 1947 ("LMRA") 2
LMRA section 301 (29 U.S.C. Section 185) 2
Civil Rights Act of 1964 AS Amended.....3
42 U.S.C. Section 2000e 3
42 U.S.C. Section 1981 4
28 U.S.C. Section 1981 4

IN THE

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit appears at **APPENDIX A** to the petition and is unpublished. The opinion of the United States District Court for the District of Nevada appears at **APPENDIX B** to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was April 2, 2009. No petition for rehearing was filed in my case. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory Provisions involved are:

Section 301 of the Labor Management Relations Act (LMRA) of 1947 (29 U.S.C. Section 185).

(a)—Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b)--Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c)--For purposes of actions, and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization

(1) in the district in which such organization maintains its principal office, or

(2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e

(a)—It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(c)—It shall be an unlawful employment practice for a labor organization

(1) to exclude or to expel from its membership, or otherwise to discriminate against any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment

any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

28 U.S.C. Section 1981 and 42 U.S.C. Section 1981

(a)--All persons within the jurisdiction of the United States shall have the same right in every territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment pains, taxes, licenses, and actions of every kind and to no other.

(b)—For purposes of this section, the term "make and enforce contracts" include the making, performance, modification, and termination of contracts, and the enjoyment of all benefits and privileges, terms, and conditions of the contractual relationship.

STATEMENT OF THE CASE

Background of the Case

This case involves an employment discrimination charge, disparate treatment claim, and Breach of Duty of Fair Representation claim brought against my former employer, Rite Aid Corporation, and my former bargaining Unit, Teamsters Union Local No. 995.

I was a pharmacist employed by Rite Aid Corporation, and a member of the Professional, Clerical and Miscellaneous Employees Union, Local 995 ("the Union"). I joined Rite Aid on January 15, 1999, and on that same day became a member of the Union, Local 995. Prior to my suspension that gave rise to this lawsuit I never violated any Rite Aid company policy, and had never received any kind of discipline. (I received certificates, and letters of appreciation for going above and beyond in my work).

A collective bargaining agreement between Rite Aid and the Union describes the various rights and responsibilities of the parties. Contained in the agreement is a provision stating that the employer (Rite Aid) will only discharge employees for *just cause* shown, and that the Employer will follow principles of progressive discipline, with written notice to precede suspension and discharge. The agreement also sets forth the procedure for handling disputes, and processing grievances, culminating in binding arbitration. **APPENDIX C. Collective Bargaining Agreement, pages 11-13.**

On January 5, 2004, I telephoned the front-end store manager Tamara Molina (hereinafter "Tammy", "Molina") of Rite Aid store #6245, where I worked, inquiring about purchase of plastic resin chairs. She informed me of an upcoming sale, and that I could purchase twenty plastic

resin chairs at a "sale" price of $2.99 each before the "sale" started on January 11, 2004. The chairs were for a condolence gathering at my house on January 10, 2004, for the death of my mother. On January 7, 2004, when I wanted to purchase the chairs, Molina told me that she would not sell the chairs to me any longer. Still needing some chairs for the condolence event, I went to another Rite Aid store #6271 and spoke with the store manager, Bob Singleton, about purchasing the chairs at the sale price. Bob Singleton agreed, and I purchased the resin chairs at the "sale" price of $2.99 each, plus my 20% employee discount.

When Molina learned that another store manager had sold the chairs to me at the sale price, she became very upset. On January 14, 2004, I was home on my day off but the Pharmacy District Manager (PDM) called me and asked if I could help cover my store because the other pharmacist called in sick. I agreed. I later arrived at the store thinking that I was there to work. But two Rite Aid managers: Defendant Alan Keel who was the Human Resources Manager (HRM), and Steve Jurado (Loss Prevention Manager) were already waiting for me. They informed me that they were investigating my purchase of the resin chairs, and started to interrogate me. In trying to explain to them what happened, I asked them if the interview could lead to any disciplinary action, and they answered yes. I immediately invoked my Weingarten rights and refused to write any reports about the purchase without Union representation. They denied me Union representation and right there suspended me from work. The store manager, Bob Singleton (a white man) who approved the sale, and the cashier, Tara Menjivar (a white woman) who rang up the sale were never disciplined.

On **January 16, 2004**, I filed a grievance with the Union over the suspension. The Union representative Defendant Glenda Bassler-Watson (hereinafter "Bassler-Watson") handled the grievance. Bassler-Watson refused to process the grievance in the same manner she handled other employees grievances. Without any investigations whatsoever, the Union conspired with Rite Aid to terminate my employment. At the *first* Step-One grievance hearing on **01/21/04**, Bassler-Watson asked me to resign or be terminated, as a way to settle the grievance. I refused to resign. She later called me at home and said the Union had worked out another agreement where I would sign some papers and go back to work. When I read the settlement agreement on **01/23/04**, I was very disappointed. The settlement agreement Bassler-Watson wanted me to sign contained, among other detrimental and incriminating languages, that I have had full and fair representation from the Union, and that the Union and Rite Aid were giving me last and final warning, and that any slightest "policy violation" would lead to my termination. **APPENDIX D. Settlement Agreement**. Rite Aid and the Union, in addition to the suspension I was grieving, also prepared a write-up discipline for me to sign. **APPENDIX E**. In other words, I was being disciplined twice for one "offense". I refused to sign the agreement and the write-up discipline because the Union did *not* conduct any investigation into my resin chairs purchase "violation", I knew that I did *not* commit any offense when I purchased the resin chairs, and that Bassler-Watson was working with Rite Aid's Alan Keel to entrap me. I had *never* violated any company policy in the past and *never* received any kind of discipline whatsoever to warrant two disciplines (the suspension for which I filed the grievance, and a write-up with the wording "a last and final warning", and my "immediate discharge" from employment) because I purchased resin

chairs. Bassler-Watson persuaded me to sign it but I refused. Later that same day she called me at home and informed me that the Union would no longer represent me. I asked her to put it down in writing but she refused. *Assuming* that I violated Rite Aid's policy when I purchased the resin chairs, which I did not, the Union refused to apply the principle of progressive discipline for me, per the CBA contract, which provides for written warning *before* suspension. The same Bassler-Watson had settled the grievances of other employees more favorably, and applied the CBA.

On 02/02/04, I wrote a letter to the Union asking it to excuse itself from my case due to its poor representation of me, so I could retain an attorney at my own expense to handle my case; the Union refused. **APPENDIX F.** When the Union found out that I was ready to go to court and file a lawsuit against them and Rite Aid, the Union informed Rite Aid, and both immediately reopened my case. On **02/03/04**, Rite Aid wrote a letter to me informing me that it had completed its investigation and was suspending me without pay until February 8, 2004. On **02/05/04**, the Union wrote a letter to Rite Aid outlining the Union's position that I had not violated any company policy and therefore the suspension was *without just cause*. **APPENDIX G, (Union's letter of 02/05/04 to Rite Aid)**. **On 02/23/04** the Union conducted a *second* Step-One grievance hearing for this same grievance. This second Step-One is not contained anywhere in the CBA and is therefore a breach of the contract by the Union and Rite Aid. On that same day, 02/23/04, another letter was written by the Union to Rite Aid regarding Rite Aid's letter of 02/03/04. The Union's letter to Rite Aid reads, in pertinent part as follows:

> "It is the opinion of the union that the grievant was issued a disciplinary suspension without

just cause. The union will be seeking that the grievant be made whole for all lost benefits and wages that the grievant would have otherwise received had he not been disciplined. At no point during the period of time in which the company suspended pending investigation and subsequently determined that the appropriate discipline for the grievant would be suspended pending investigation has the union been formally notified as to exactly why the grievant was disciplined or exactly what was found during the employer's investigation determine that a disciplinary suspension was appropriate. The company's February 3, 2004 memorandum addressed to the grievant advises him in part, 'This letter is to advise you that we have completed our investigation into the matter of your employee purchase. We have determined the appropriate discipline to be a suspension without pay through February the 8th, 2004,' which is very vague to say the least. The grievant we understand, through employer comments, is accused of making an inappropriate purchase at the same time one of your store managers who certainly should have been aware of company policy didn't stop or question the purchase and one of the company's checker clerks rang up the purchase with both discounts. If this was a known policy why is it that a store manager and a clerk were unaware that such a policy existed? In addition, the last document the grievant was required to sign concerning employee rules and regulations was the employee handbook which clearly states in part, 'after 14 days of continual employment you and your immediate family will

> be eligible for a 20% discount on items available at any Rite Aid store, including sale items'. Based on that employee handbook which once again was the last document the grievant signed concerning this matter the grievant, the store manager in question, nor the cashier in question violated any company policy." **APPENDIX H, Union's letter to Rite Aid**.

On **March 12, 2004**, the Union convened a Board of Adjustment (BOA) hearing on the grievance, a step the Union admitted it had never taken any grievance through in its many years of existence. **APPENDIX I. Union's Answer Regarding BOA and other members**. At the hearing, Rite Aid presented its case and argued that I violated company policy by receiving employee discount on sale item, despite contrary language in the last Employee Handbook I signed receipt of. **APPENDIX J, Rite Aid's policy on employee discount signed on 09/17/03 and APPENDIX K, Acknowledgement Receipt**. When I asked to present my side of the case, my request was summarily denied by both Rite Aid and the Union. When I asked to see the written policy I supposedly violated, they denied my request also. After Rite Aid presented its case, the BOA members went into a private meeting, with Rite Aid's HRM Defendant Alan Keel, and PDM Roxann Soliz. When they came out, the BOA, through its Union member, announced that I would only be paid for three days out of the three weeks suspension. That was the first time I learned that the Union had changed its position concerning the grievance. As soon as he made this announcement, they all stood up and left. Nothing was written down and nothing was signed. I approached the Union's representative, Bassler-Watson and asked for a copy of the decision. She said she would send me one later. When I asked her what comes next

in the grievance process because I disagreed with the Union's sudden change in position, she told me that the case was closed and could not be pursued any further. I called the Union about three (3) times requesting a copy of the decision at the BOA hearing but none came. Finally, I wrote a letter on 03/29/04 and faxed it to teamsters local 995 requesting the copy of BOA decision, **APPENDIX L**. After I faxed this letter, the Union sent a letter to me dated 03/24/04, but postmarked 03/29/04, addressing the BOA decision, **APPENDIX M**, and in this letter enclosed the so-called decision of the BOA denying my "grievance in its entirety". **APPENDIX N**. It took the Union over two (2) weeks after the meeting, three phone calls and a faxed letter, to send to me a totally different decision from what was announced on 03/12/04. The Union reversed its position again, this time denying my grievance in its entirety. No reason was provided. No further recourse was provided. So, despite the truth and the merit of my grievance which the union admitted and acknowledged in no uncertain terms, the union upheld the "unjust" discipline and disposed of my case without any explanation whatsoever.

I exhausted all administrative remedies including filing unfair labor practices with the National Labor Relations Board (NLRB); and discrimination charge based on race and national origin with the Nevada Equal Rights Commission (NERC)/EEOC, which issued a right to sue letter, before I filed lawsuit with the United States District Court here in Las Vegas, Nevada, and later an appeal with the Ninth Circuit Court Of Appeals. My attorneys were crooked/corrupt. For instance, William Bryson and John Aldrich of the law firm of Aldrich & Bryson, whom I paid over sixty-five thousand dollars ($65,000.00) on an hourly basis, were in charge of this case for about two years but did not notice a single

deposition of any of the defendants or witnesses before withdrawing from the case, just before the discovery deadline expired. The judges in this case, no doubts, were biased, catered to the rich defendants, abused their discretionary powers, and failed to apply the law. The District Court, for instance, condoned the defendants not answering the discovery questions I presented; denied me the opportunity to depose any of the defendants, but ordered my deposition by the defendants; granted my attorneys motion to withdraw, but without protecting my rights and safeguarding my case. So, my case went through summary judgment without access to information crucial to litigate my case. Unfortunately, the Appeals Court sanctioned the rulings of the District Court that were based not on the application of the law and the truth, but were biased, and based on lies. The Ninth Circuit simply affirmed the unjust and illegal judgment of the District Court in Nevada without any regard to the truth or the law. The level of injustice I have received so far in the hands of these corrupt judges who continue to suppress the truth, deny justice, and favor the rich defendants solidify my resolve to continue to pursue my case until the truth prevails and justice served.

ARGUMENT

Breach of Duty of Fair Representation Claim Against Local 995 and Bassler-Watson:

"A Union owes a duty of fair Representation to those it represents and an employer must honor the terms of the Collective Bargaining Agreement to which it is a party." Bliesner v. Commc'n workers of America, 464 F. 3d 910, 913 (9th Cir. 2006).

"A Union acts arbitrarily only if it shows an egregious or reckless disregard for the rights of those it represents." Patterson v. Intl. Brotherhood of Teamsters, Local 959, 121 F. 3d 1345, 1349 (9th Cir. 1997).

In this case, Rite Aid and the Union clearly breached the terms of the Collective Bargaining Agreement. Teamsters local 995 showed reckless disregard for my rights when it perfunctorily processed the grievance I filed, disregarded all timelines and procedures in processing grievances as provided in the CBA and disposed of a meritorious grievance without giving me any reason.

The Union disregarded the terms of the Collective Bargaining Agreement (CBA):

(1). If we *assume* for a moment that I did something wrong, Rite Aid disregarded the terms of the CBA it has with the Union when it did not apply the principle of progressive discipline but outright suspended me on 01/14/04 without any written notice preceding the suspension.

(2). The Union condoned Rite Aid's obvious breach of the CBA contract by failing to address the breach above. The Union sided with Rite Aid and upheld this breach.

(3). Contrary to the CBA which provided for only **one** Step-One grievance hearing when processing grievances, the Union conducted **two** Step-One grievance hearings in this grievance. As Rite Aid was unable to produce any violation I committed at the *first* hearing, the Union, in its effort to help Rite Aid, gave them ample time to "cook-up" a violation, and then held a *second* hearing, in violation of the CBA. This action was in sharp contrast to the manner in which the Union handled another employee's grievance. In that case, the Union refused to grant to another employer a second Step-One grievance Hearing and took the grievance straight to final and binding arbitration.

APPENDIX O, Union's Newsletter describing another employee's grievance handling

(4). I filed my grievance on 01/16/04, the Union did not take the grievance to Adjustment Board until March 12, 2004. The Union failed to follow the timeline and procedure for processing grievances as outlined in the CBA. The Union, in conspiracy with Rite Aid, stretched a process that should have taken 7 days into 2 months, and still disposed of my case without any reason, other than discrimination and bad faith.

"A union breaches its duty of fair representation 'only when [its] conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.'" Vaca v. Sipes, 386 U.S. 171, 190 (1967).

The Union deviated from its usual and customary practice:

(5). During the step-one grievance hearing, the Union deviated from the usual and customary practice and turned what was supposed to be a hearing where the employer produces the violations which the employee committed, its evidence and basis for which the employee was disciplined, into an avenue for Rite Aid to interrogate, intimidate, harass and persecute me, while my Union representative just sat there, looked on, and said nothing. My Union representative, Bassler-Watson, did not question Rite Aid's actions or require Rite Aid to justify their actions, or present any documents to support the suspension imposed on me. After Rite Aid was done badgering me, Bassler-Watson went outside and held a private meeting with Rite Aid where they conspired to terminate my employment. The Union

then spoke when Bassler-Watson came to me after her private meeting with Rite Aid and asked me to resign or be terminated.

(6). The Union maliciously, and in bad faith took my case through the Board of Adjustment (BOA) hearing, something never done by the Union in the past, just to dispose of the grievance. The Union admitted that it had processed every grievance where the discipline was without just cause from step-one hearing straight to final and binding arbitration. Even with the Union's admission that my case was the only grievance ever taken through BOA hearing in its many years of handling grievances, the Courts still found in favor of the Union and Rite Aid.

(7). The Union failed to take my case to final and binding arbitration, like it had for other employees before me, despite the fact that I was disciplined without just cause.

(8). At the BOA hearing, the Union did not argue my case and would not allow me to present my case either.

"A Union's actions are arbitrary 'only if, in light of the factual and legal landscape at the time of the Union's behavior is so far outside a wide range of reasonableness as to be irrational'". Airline pilots Ass'n v. O'Neil 499 U.S.65, 67 (1991).

The Union disregarded the principle of *just cause* and reverses itself:

(9). Even though the Union had written to Rite Aid on 02/23/04, stating that Rite Aid never informed the Union as to exactly why I was disciplined and never said what their investigation found out, the Union took my grievance through BOA and discarded

my case, without any *adjustment*, without any explanation.

(10). Even though the Union wrote a letter to Rite Aid stating that my suspension was "*without just cause*", the Union took the grievance through BOA and discarded a meritorious case without giving me any reason.

(11). Even though the Union wrote a letter to Rite Aid stating that I did not violate any company policy based on the last policy document I signed receipt of, the Union took my case through BOA, abruptly reversing its position, and then disposed of my case without my prior knowledge or any explanation.

(12). Although the Union, in its letter to Rite Aid, questioned the legitimacy of my suspension and the alleged policy violation based on the involvement of the store manager and the cashier in the resin chairs purchase who were never disciplined, the Union refused to process the grievance through final and binding arbitration, but rather conspired with Rite Aid to take my case through BOA so as to have a "legitimate" avenue to dispose of my case.

(13). Even though the Union knew and documented very well that my suspension was malicious and without just cause, the Union, for whatever benefit it received, reversed its position, sided with Rite Aid and upheld the same suspension it stated was without just cause, and discarded the grievance without any explanation, despite the lack of just cause.

(14). Even though the Union's letter to Rite Aid stated that Rite Aid had no legitimate reason to suspend me and that Rite Aid's letter to me was "vague", the Union abruptly reversed its position at the BOA

hearing (where the Union did not present my case and I was not allowed to present my case either), and discarded my case in its entirety without any reason.

"For purposes of the duty of fair representation, a Union acts arbitrarily where it cannot provide a reasoned explanation for its conduct or it acts without a rational basis." Dutrisac v. Caterpillar Tractor Co, 749 F.2d 1502 1270 (9th Cir. 1983). Union's failure to have rational explanation for failure to timely follow grievance procedure is evidence of arbitrary conduct. In my case, it is clear that the Union acted arbitrarily, and unfairly represented me, and even when the Union wrote a letter to me it only advised me that my grievance was "denied in its entirety" and no reason was provided. And when I called the Union for an explanation, none was given to me, instead the Union representative, Bassler-Watson hung up the phone on me.

It is well established that Rite Aid breached the CBA when it failed to follow the principle of progressive discipline, *assuming* that I violated any policy, by suspending me without written notice preceding suspension; and suspending me without just cause. Yet the Union condoned Rite Aid's actions, and the District Court and the Appeals Court sanctioned them. This is wrong, and unjust.

In Slevira v. Western Sugar Co., 200 F.3d 1218, 1222 (9th Cir. 2000), the court held that the Plaintiff employee can prevail against the Union defendant only where it is established *both* that the governing CBA was breached and the Union defaulted in its fair representation duties. And most recently, in Bliesner v. Communication Workers of America,

464 F.3d 910, 913 (9th Cir. 2006), the circuit court reaffirmed this rule. There is no question here after reviewing the CBA and the Union's actions as to whether the Union breached the CBA in my case and that the Union defaulted in its fair representation duties.

THE UNION DISPOSED OF MY GRIEVANCE WITHOUT ANY REASON

Under the fair representation doctrine, the union is required to have a rational basis for making any decision regarding a grievance. Mere whim or no reason, will not support a contention that the union merely exercised judgment. The truth still remains that the union did not provide any reason to me for their decision to discard my grievance. The union is required to provide its reason at the very time of its decision and not wait for or rely on their counsel to come up with a reason for them after a lawsuit is filed. Despite the fact that Local 995 knew and documented very well on several occasions that Rite Aid suspended me unjustly, knew and documented very well that Rite Aid never provided the Union any reason for the discipline issued to me, knew and documented very well that Rite Aid had no just cause for disciplining me, knew that both the Union and Rite Aid breached the Collective Bargaining Agreement, knew and admitted that the Union had never taken any case through the Board of Adjustment, Teamsters Local 995, took my case through the BOA on **March 12, 2004**, (almost two months from my suspension date) and on **March 29, 2004**, wrote a letter to me disposing of my case without giving any reason. Simply put, the Union aided Rite Aid by disposing of a meritorious grievance. Even though the Union knew that my suspension was not warranted, it upheld the same suspension by discarding my grievance, without any reason whatsoever as to why it decided to

reverse its position.

42 U.S.C. section 1981 against Local 995 and Bassler-Watson:

The court had ruled that in order to survive summary judgment, Plaintiff must satisfy initial burden of establishing the prima facie case of discrimination under the McDonnell framework.

The McDonnell Douglas standard for making a prima-facie case contains four necessary elements: (1) Plaintiff must belong to a protected class; (2) Plaintiff must be qualified for his position; (3) Plaintiff must be subject to an adverse employment action; and (4) Similarly situated individuals outside his protected class must have been treated more favorably. (Chuang, 225 F.3d, 1123). The Ninth Circuit has made it clear that the "requisite degree of proof necessary to establish a prima facie case... is minimal and does not even need to rise to the level of a preponderance of the evidence." Wallis v. J.R. Simplot Co., 26 F.3d 885, 889 (9th Cir. 1988).

I satisfied the McDonnell burden. First, I am a black man of Nigerian descent. Second, I am well qualified for a pharmacist position and was performing my job satisfactorily. I had never violated any Rite Aid policy or Union's contract and as such never received any discipline regarding my job at Rite Aid or membership with the Union prior to my unjust suspension. Third, I suffered an adverse employment action. I was suspended, *without just cause*, for being a Rite Aid customer and purchasing plastic resin chairs for my friends to sit on when they came to pay a condolence visit to my family for the death of my mother. The Union upheld Rite Aid's actions by disposing of my grievance without any reason, despite the lack of just cause. Fourth, the other white employees whom the Union handled their grievances,

namely Ed Rafftery, Randall Kohl, and Hitendra Chokshi were treated more favorably in that the principle of progressive discipline was applied for them, and their grievances taken to final and binding arbitration where they won their cases against Rite Aid. The Union took their grievances after **one** Step-One grievance hearing straight to final and binding arbitration. In Ed Rafftery's case, the Union applied the principle of progressive discipline so well that whatever discipline he may have received was void after three (3) months and could never be used against him in the future. Not one of these my non-black colleagues was required to sign any document *admitting guilt*, or to sign *a last and final warning*, and *agree to waive all rights under the collective bargaining agreement*. The Union did not take their grievances, and had never taken any grievance to BOA except mine. The Union did not dispose of any of their grievances, and had never discarded or disposed of any white pharmacist's grievance. But the Union disposed of my grievance without any reason. Furthermore, the other white employees involved in the purchase of the plastic resin chairs at the Rite Aid store #6271 where they worked, namely Bob Singleton (the store manager who approved the sale), and Tara Menjivar (the assistant manager / cashier who sold the chairs to me), were never suspended or received any other kind of discipline.

42 U.S.C. Section 1981 CLAIM AGAINST RITE AID AND MOLINA

The same burden shifting scheme set forth in McDonnell Douglas framework, applied above for Local 995 and Bassler-Watson, also applies here in my claim against Rite Aid. The court has held that to prevail in an employment discrimination case, Appellant "must offer evidence that give[s] rise to an inference of unlawful discrimination, either through the framework set forth

in McDonnell Douglas Corp. v. Green, 411, U.S. 792, (1973) or with direct or circumstantial evidence of discriminatory intent." Vasquez v. County of Los Angeles, 349 F.3d, 643, 640 (9th Cir. 2003).

I satisfied this McDonnell Douglas burden and presented both direct and circumstantial evidence of discriminatory intent to the district court and Ninth Circuit Court of Appeals but the Judges refused to consider the evidence when they decided my case.

(1). I am a black man of Nigerian descent.

(2). I was well qualified for a pharmacist position and was performing my job satisfactorily. I had an impeccable personnel record, and had never received any kind of discipline whatsoever, including regarding my work, prior to my mother's death and purchase of plastic resin chairs from Rite Aid store #6271.

(3). I was unfairly denied a purchase from Rite Aid store #6245, a privilege enjoyed by every white employee and citizen.

(4). I was suspended for three weeks without pay simply because I was a Rite Aid's customer. I was disciplined for a purchase that was approved by the store manager and rang up by the store cashier.

(5). The white store Manager who approved the sale and the white cashier who rang up the plastic resin chairs were never disciplined.

(6). Rite Aid had never suspended any other white pharmacist or employee who made a purchase or who received his 20% employee discount from any Rite Aid store.

(7). In the five (5) years I worked for Rite Aid, prior to being suspended for purchasing the plastic resin

chairs, I had never received any discipline of any kind.

(8). Rite Aid intentionally breached the CBA regarding investigative interviews, progressive discipline, the requirement for just cause when issuing disciplines, and conspired with the Union to circumvent the guidelines outlined in the CBA for handling grievances.

(9). Rite Aid did not issue me any written warning within three months of issuing me a harsher suspension discipline, for the alleged policy violation of purchasing resin chairs, as required by the CBA.

DISPARATE TREATMENT CLAIM AGAINST RITE AID AND MOLINA

My disparate treatment claim is analyzed under the same frame work as my section 1981 claim. As described above, I fully satisfied the McDonnell Douglas burden of establishing the prima-facie case of discrimination.

(1). It is undisputed that I am a black man of Nigerian descent, which made me belong to a protected class.

(2). It is undisputed that I am a pharmacist who was performing my job very well, and that purchasing some plastic chairs from Rite Aid has never been part of the requirements for, or *duties of* a pharmacist.

(3). It is an undisputed fact that I had never been disciplined before for poor job performance, or for anything, and that I had an impeccable work record.

(4). It is an undisputed truth that my job performance evaluation was never based on my purchases at Rite Aid.

(5). It is an undisputed fact that making purchases / shopping at Rite Aid was not one of the duties of a pharmacist.

(6). It is an undisputed fact that Tamara Molina admittedly refused to sell to me some plastic resin chairs at Rite Aid #6245, where I worked, a privilege she had consistently extended to and enjoyed by all white employees, and outside customers alike.

(7). It is an undisputed fact that I was lied to, and lured to work on my day off in order to be suspended for a legitimate purchase I made, that has nothing to do with my duties and responsibilities as a Rite Aid pharmacist. That was a humiliating treatment never meted out before to any of my white colleagues.

(8). It is an undisputed fact that Rite Aid treated me differently by suspending only me, but never suspended, or issued any other type of discipline to the white manager who approved the sale or the white cashier who rang up the sale. *Assuming* I committed an offense by purchasing the resin chairs, I received a harsh punishment for first "offense".

(9). It is an undisputed fact that Rite Aid treated me differently by denying me the opportunity to have my union representative present before interrogating and disciplining me on that day, 01/14/04, contrary to the CBA, and contrary to the usual and customary practice at Rite Aid.

(10). It is an undisputed fact that Rite Aid treated me differently by suspending me without first issuing to me a warning notice, as required by the CBA, *assuming* I violated any policy, like they did for other white pharmacists who violated company policy and whose disciplines became null and void

after three (3) months of no similar violations.

(11). It is an undisputed fact that Rite Aid treated me differently by requiring me to sign a "last and final" warning write-up for first time policy violation in my five (5) years of employment with Rite Aid, assuming that purchasing resin chairs was a violation. No white pharmacist has ever been presented with or required to sign such a write-up in any grievance process.

The Ninth Circuit has held that, as a general matter, "the plaintiff in an employment discrimination action need produce very little evidence in order to overcome" a motion for summary judgment. Chuang v. University of California Davis, Bd. Of Trustees, 225 F.3d 1115, 1124 (9th Cir. 2000). Based on the above, it should not be very hard for any fair minded and impartial Judge to determine that I was discriminated against by both the Union and Rite Aid. And that the Union breached its duty of fair representation owing to me, and that Rite Aid treated me differently. Simply put, Rite Aid and the Union conspired against me and worked in concert to discriminate against me and deny me my civil rights.

REASONS FOR GRANTING THE PETITION

I ask that this Honorable Court grant my writ of certiorari for the following reasons:

(1). The Ninth Circuit erred in its ruling in the sense that it failed to address my 1981 claim against the Union, and my disparate treatment claim against Rite Aid. The Ninth Circuit kept mute, bundled my case, and disposed of it without discussing the real issues pertaining to my case.

(2). The Ninth Circuit's ruling is contrary to law. It was very clear from all the facts on record in this case that I was discriminated against, but the Ninth Circuit turned a blind eye to this injustice by affirming the District Court's ruling.

(3). The Ninth Circuit's ruling, just like that of the District court, is biased and not based on the truth.

(4). The Ninth circuit refused to address the issues I raised in my appeal which form the very substance of my case, but instead disregarded them and affirmed the biased ruling of the biased District court.

(5). The Ninth Circuit refused to answer the questions I presented in my case, but rather chose to answer the questions fashioned and presented by the defendants.

(6). The Ninth Circuit catered to the rich and influential defendants, just like the District court did.

(7). The Ninth Circuit, just like the District court, erroneously adopted the notion that the Union's conduct towards my grievance "involved the union's judgment as to how best to handle a grievance." The truth is that the union's conduct in my case is a deliberate act of discrimination and conspiracy with Rite Aid to deny me of my rights. The Union intentionally breached all time lines regarding the processing of the grievance, refused to enforce the CBA for me, and finally disposed of a meritorious grievance without providing me any reasons.

(8). The Ninth Circuit did not address the fact that the biased Magistrate Judge Robert J. Johnston denied me the opportunity to depose the defendants before my case went to summary judgment, even

though I timely filed a Motion to extend discovery deadline, and showed good cause. So, my case went to summary judgment without obtaining the vital information from the defendants needed to litigate my case; the District court quickly granted summary judgment to the defendants, and the Ninth circuit failed to remedy this "travesty of justice". The notion that Teamsters Union in Nevada is "very powerful, very influential, and untouchable" appears to be so because not a single judge in this case dared to compel the Union, and Rite Aid, to appear for depositions. The judges catered to the Union, and Rite Aid.

(9). The Ninth Circuit, like the District court, victimized me, a poor black man who appealed the District court's ruling on my own, arguing my case to the judges, against the defendants, Rite Aid and the Union, the two powerful financial giants, without any attorney, by disregarding my argument and my evidence, and sanctioned the biased ruling of the district court.

(10). In reviewing my appeal, the Ninth Circuit disregarded the law and all of its provisions, and prior rulings. The Ninth Circuit has held that the burden of demonstrating the absence of material fact lies with the moving party, and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U. S. 144, 157 (1970); Martinez v. City of Los Angeles, 141 F. 3d 1373,m 1378 (9th Cir. 1998).

The court erred and deviated from its very own prior ruling by considering all materials lodged in the light most favorable to the rich, influential, and well-connected defendants.

(11). The Ninth Circuit judges disregarded the evidence I presented, the evidence in the record in this case which included the fact that I was not allowed to depose any of the defendants before my case went to summary judgment, and disregarded the bias, the conflict of interest and abuse of judicial discretion and power which I raised regarding magistrate judge Robert J. Johnston's close family friend (who was once the judge's baby-sitter, now a lawyer) being an attorney of counsel at the law firm of Aldrich & Bryson that victimized me, and sanctioned the biased ruling of the District court.

The Ninth Circuit has held that "A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth." Lynn v. Sheet Metal workers int'l Ass'n., 804 F.2d 1472, 1483 (9th Cir. 1986).

Despite the inconsistencies, lies, and differing, contradicting stories and evidence between the defendants' stories which the district court was aware of, and I pointed those out in my appeals documents, the Ninth Circuit went ahead and affirmed the district court's ruling.

Despite the fact that I presented evidence to the Ninth Circuit of other white pharmacists/employees who were treated more favorably by both the Union and Rite Aid, as I presented to the district court, and the fact that two white employees who conducted the so-called "improper sale" of the resin chairs were never disciplined, the Ninth circuit affirmed the district court's ruling.

No Court ever asked Rite Aid to provide a legitimate reason why the two white employees who sold the resin chairs to me were never punished. After all, an "improper purchase" occurred as a result of an "improper sale". And

no court ever asked the Union to provide a legitimate reason why my grievance was treated differently from those of other grievances that were not steered to the BOA hearing and discarded, and why all but mine were taken to final arbitration.

These are some of the questions begging for answers, but the District court and Ninth Circuit did not care about the truth. They catered to the rich, and well-connected defendants. It is my hope that this Supreme Court will finally put a stop to the favoritism, corruption, and injustice that the judges in this case have exhibited, and right this wrong that has been going on for over five (5) years. My family has been victimized for too long. The District court judges did not afford me the time and opportunity to conduct depositions of any of the defendants, and to complete discovery as is provided by the Federal Rules.

Magistrate judge Robert J. Johnston hurriedly closed the discovery deadline, but ruled that the defendants would depose me, and they did. But he would not allow me to depose any of the defendants. He later extended the time, once again, for the defendants to complete all their needed discoveries, after he had supposedly closed the discovery deadlines, still denying me any opportunity to depose the defendants or to complete my own discoveries.

Simply put, the "adequate time" afforded to the defendants to complete all their discoveries was denied me. So, the District court made mockery of the summary judgment in this case because it denied me access to discoverable information from the defendants, and then ruled against me. The Ninth Circuit court of appeals sanctioned the unlawful actions of the District court... the bias, abuse of power and discretion, and a ruling not based on the truth and facts.

Finally, in granting this petition for writ of certiorari, the Supreme Court will give hope to employees across the nation who are suffering discrimination based on their race and nationality in the hands of their employers. Granting my petition will be of national importance to millions of employees across this country who belong to Unions but are being unfairly represented and intimidated by their Unions, and the Unions getting away with these illegal acts.

In deciding the issues presented in this petition, I beseech the Supreme Court to factor in the employees all across this country who are being misrepresented by their labor Unions which claim to be "fighting" for them, but are actually fighting for the employers.

I implore this Supreme Court to grant my petition as doing so will give hope to all those who are experiencing discrimination in one form or the other across this great nation a sense of belonging and renewed confidence in our judicial system, and belief that the victimization by one employer, one Union, one or two courts do not reflect what the founders of this country intended. It will strengthen the true meaning of "all men are created equal", and reinforce in ordinary people the confidence that our judicial system still works.

Granting this petition will further strengthen the belief in "equal justice for all" for employees across the United States. And that yes, we can petition the Supreme Court for justice when we strongly believe that we have been wronged, and be heard when everyone else has shut the door on our face, whether you are an attorney or not, whether you have an attorney or not, whether you are rich and famous or poor and unknown, and whether you are black or white.

CONCLUSION:

Based on the foregoing, I respectfully ask this Supreme Court to grant my petition for writ of certiorari.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Raymond Obiajulu

Petitioner/Plaintiff

Pro Se

Date: June 30, 2009.

APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED APR 02 2009, MOLLY C. DWYER, CLERK, U.S. COURT OF APPEALS

RAYMOND OBIAJULU, Plaintiff - Appellant, v. RITE AID CORPORATION; et al., Defendants - Appellees.	No. 07-17117 D.C. No. CV-04-01329-BES/RJJ MEMORANDUM*

Appeal from the United States District Court for the District of Nevada Brian F. Sandoval, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Raymond Obiajulu appeals pro se from the district court's summary judgment for defendants in Obiajulu's action alleging race discrimination in employment by

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rite Aid Corporation and breach of the duty of fair representation by Teamsters Local Union No. 995. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 659 (9th Cir. 2002), and we affirm.

The district court properly granted summary judgment for the Rite Aid defendants because Obiajulu failed to raise a triable issue as to whether Rite Aid suspended him on account of his race or national origin. *See Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658-59 (9th Cir. 2002) (explaining that to survive a motion for summary judgment a plaintiff must be able to demonstrate that an employer's proffered legitimate and nondiscriminatory explanation for adverse employment action is pretext for discrimination).

The district court properly granted summary judgment for Local 995 on the duty of fair representation claim because Obiajulu did not raise a triable issue as to whether Local 995's representation of him during his grievance of the suspension was arbitrary, discriminatory, or in bad faith. *See Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985) ("A union breaches its duty of fair representation only when its conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.") (internal quotation marks and citation omitted); *id.* at 1254 ("We have never held that a union has acted in an arbitrary manner where the challenged conduct involved the union's judgment as to how best to handle a grievance.").

We decline to consider Obiajulu contention, raised for the first time on appeal, regarding alleged bias of the magistrate judge. *See MacDonald v. Grace Church Seattle*, 457 F.3d 1079, 1086 (9th Cir. 2006).

Obiajulu's remaining contentions are unavailing.

We deny all pending motions.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit Office of the Clerk
95 Seventh Street; San Francisco, California 94103

General Information
Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue seven calendar days after the expiration of the time for filing a petition for rehearing or seven calendar days from the denial of a petition for rehearing, unless the court directs otherwise. To file a motion for stay of mandate, file it electronically via the appellate ECF system or by paper with an original and four copies of the motion.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -4)

(1) A. **Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:

- A material point of fact or law was overlooked in the decision;
- A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
- An apparent conflict with another decision of the court was not addressed in the opinion.

- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full court is necessary to secure or maintain uniformity of the court's decisions; or
  - The proceeding involves a question of exceptional importance; or
  - The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within fourteen (14) days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion

to recall the mandate.

- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.
- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11.

- If a petition is filed electronically via the appellate ECF system, no paper copies are required.
- If filing a petition for panel rehearing by paper, submit an original and 3 copies.
- If filing a petition for rehearing en banc by paper, submit an original and 50 copies.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information.

Attorney's Fees

- Circuit Rule 39-1 describes the content and due dates for attorney fee applications.
- All relevant forms are available on our website www.ca9.uscourts.gov or by telephoning (415) 355-7806.

Petition for Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourtus.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ➤ West Publishing Company;
    610 Opperman Drive;
    PO Box 64526; St Paul, MN 55164-0526
    (Attn: Kathy Blesener, Senior Editor);
  - ➤ and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court."

Form 10. Bill of Costs.....*(Rev. 1-1-05)*

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

_____ v _____ 9th Cir. No _____

The Clerk is requested to tax the following costs against: _____

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED Each Column Must Be Completed				ALLOWED To Be Completed by the Clerk			
	No. of Docs *	Pages per Doc	Cost per Page**	TOTAL COST	No. of Docs *	Pages per Doc	Cost per Page**	TOTAL COST
Excerpt of Record			$	$			$	$
Opening Brief			$	$			$	$
Answering Brief			$	$			$	$
Reply Brief			$	$			$	$
Other			$	$			$	$
			TOTAL:	$			TOTAL:	$

Form 10. Bill of Costs - *Continued*

Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys fees **cannot** be requested on this form.

* If more than 7 excerpts or 20 briefs are requested, a statement explaining the excess number must be submitted.

** Costs per page may not exceed .10 or actual cost, whichever is less. Circuit Rule 39-1.

I, _____, swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature _____

Date _____

Name of Counsel _____

Attorney for _____

(To Be Completed by the Clerk)

Date _____ Costs are taxed in the amount of $ _____

Clerk of Court

By: _____, Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RAYMOND OBIAJULU, Plaintiff, v. PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, TEAMSTERS LOCAL UNION NO. 955 and GLENDA BASSLER-WATSON, an individual, in her official and individual capacity, Defendants.	2:04-CV-01329-BES-RJJ **ORDER**

Presently before the Court is Defendants Teamsters Local 995 ("Local 995" or the "Union") and Glenda Bassler-Watson's ("Bassler-Watson") Motion for Summary Judgment (#93), filed on March 26, 2007. Plaintiff Raymond Obiajulu ("Obiajulu") filed his Opposition to Motion for Summary Judgement (#125) on April 16, 2007. Local 995 and Bassler-Watson filed their Reply in Support of Motion for Summary Judgment (#127) on April 25, 2007. Also before the Court is Defendants Rite Aid Corporation ("Rite Aid") and Tamara Molina's ("Molina") Motion for summary Judgment (#114). Obiajulu filed his Opposition to Motion for Summary Judgment (#126) on April 16, 2007. Rite Aid and Molina filed their Reply in Support of Motion for Summary Judgment (#129) on April 30, 2007. In addition, the Court here considers Rite Aid's Motion for Sanctions (#131), filed on May 14, 2007. Obiajulu filed his Response to Motion for Sanctions (#135) on June 1,

2007. Rite Aid and Molina filed their Reply in support of Motion for Sanctions (#136) on June 11, 2007.

I. Background

Raymond Obiajulu was hired by Rite Aid as a staff pharmacist on January 15, 1999. (Ceballos Decl. (#117) ¶ 2.) Upon accepting a position with Rite Aid, Obiajulu became a member of Local 995. Local 995 is a local labor organization with exclusive bargaining representatives for several separate bargaining units, including Rite Aid. (Mot. Summ. J. (#94) 2.) At all times pertinent to this action, Local 995 and Rite Aid were parties to a collective bargaining agreement (the "Agreement"). (Magnani Decl. (#97) ¶ 4.) Obiajulu, as a member of Local 995, was covered by the Agreement. The Agreement includes provisions relating to the various terms and conditions of the employment of the bargaining unit, including a two-step grievance procedure. (Bassler-Watson Decl. (#96) ¶ 8, Ex. A.) That procedure requires the employee first to file a grievance with Local 995, which in turn presents it to Rite Aid's local pharmacy development manager. Id. If no resolution is arrived at during the initial meeting, Local 995 then has the option to refer the grievance to the Board of Adjustment ("BOA"). Id. If the BOA makes a unanimous decision, that decision is final and binding; if it does not, then Local 995 may refer the grievance to final and binding arbitration. Id.

Around January 1, 2004, Obiajulu's mother passed away. (Opp'n (#125) 3.) Following her death, Obiajulu planned to host a condolence gathering at his home. Id. In order to accomodate his guests, Obiajulu sought to purchase twenty resin chairs. Id. At the time, Rite Aid sold resin chairs and was about to reduce the price for purposes of a sale. Id. Knowing that the price was soon to be reduced – from $4.99 to $2.99 – Obiajulu approached his direct supervisor, Tammy Molina ("Molina"), about

the possibility of purchasing the chairs at the sale price. Id. Initially, Molina agreed to sell Obiajulu the chairs at the sale price. Id. However, two days later, when Obiajulu attempted to purchase the chairs, Molina expressed reservations about giving Obiajulu an advance opportunity to buy the chairs at the sale price and upon discussing the matter with Scott Hamelstrom, the district manager, informed Obiajulu that he could not buy the chairs at the sale price prior to the date upon which the price became available to the public. (Obiajulu Dep. (#95) 66:4-22, 78:4-23.)[1]

After being refused the opportunity to buy the chairs at their sale price but before the sale price came into effect, Obiajulu went to a different Rite Aid store in Las Vegas. (Obiajulu Dep. (#95) 100:16-01:19.) There, he purchased the chairs at the future sales price of $2.99. See id. He also received an employee discount, bringing the price of each chair to $2.57. (Opp'n (#125) 4.) Obiajulu later told Molina that he was able to get the advance sale price at the other Rite Aid location. (Obiajulu Dep. (#95) 135:18-36:5) Molina then placed Obiajulu on suspension for having violated Rite Aid policies in purchasing the chairs. Id. at 172:1-10.

On January 14, 2004, after being placed on suspension, Obiajulu contacted Bassler-Watson, a Local 995 business representative, about the possibility of filing a grievance under the Agreement. (Bassler-Watson Decl. (#96) ¶ 9); (Obiajulu Dep. (#95) 358-361.) On January 16, 2004, Obiajulu went to the offices of Local 995 and filed a grievance. (Bassler-Watson Decl. (#96) ¶ 11); (Obiajulu Dep. (#95) 360:22-361:7.) On January 21, 2004, a meeting was convened at the offices of Local 995, per step one of

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[1] Excerpts from Obiajulu's deposition can be found attached to Local 995's Statement of Undisputed Material Facts (#95) as Deposition Volumes I & II.

the grievance procedure. (Bassler-Watson Decl. (#96) ¶ 15); (Obiajulu Dep. (#95) 374:19-376:18.) At the meeting, Rite Aid was represented by Alan Keel and Roxana Soliz, Rite Aid's labor relations representatives. At the conclusion of the meeting, Bassler-Watson informed Obiajulu that Rite Aid intended to settle the grievance, which would insist only on a three day suspension. (Bassler-Watson Decl. (#96) ¶ 15). Obiajulu, however, refused to execute the proposed settlement agreement. (Bassler-Watson Decl. (#96) ¶ 19.); (Obiajulu Dep. (#95) 389.) The offer was then withdrawn. (Bassler-Watson Decl. (#96) ¶ 19); (Obiajulu Dep. (#95) 386:14-390:25.)

On February 4, 2004, Rite Aid informed Obiajulu that it had concluded that the appropriate sanction for the alleged insubordination was an unpaid suspension that would conclude on February 9, 2004. (Bassler-Watson Decl. #96) ¶ 24); (Obiajulu Dep. (#95) 414:24-25, 415:1-15.) On February 9, 2004, Bassler-Watson and Keel agreed to a second first-step meeting on the Obiajulu's grievance because the suspension constituted additional discipline. (Bassler-Watson Decl. (#96) ¶ 28.) Bassler-Watson then met with Obiajulu to prepare for the meeting. (Bassler-Watson Decl. (#96) ¶¶ 30-31); Obiajulu Dep. (#95) 438:10-15.) Obiajulu had several demands, including a written apology from Rite Aid, payment of damages for pain and suffering, and a guarantee of employment. (Bassler-Watson Decl. (#96) ¶¶ 30-31); (Obiajulu Dep. (#95) 438:10-15.) Ultimately, no settlement was reached. (Bassler-Watson Decl. (#96) ¶ 33); (Obiajulu Dep. (#95) 448:9-11.)

Local 995 then made a demand that the grievance be referred to the BOA. (Bassler-Watson Decl. (#96) ¶ 34); (Obiajulu Dep. 451:6-12.) On March 9, 2004, the BOA was convened. (Bassler-Watson Decl. (#96) ¶ 38.) However, because Obiajulu objected to the presence of

Ms. Soliz sitting as Rite Aid's representative on the BOA, the BOA was dismissed. (Bassler-Watson Decl. (#96) ¶ 39); (Obiajulu Dep. (#95) 317:22-318:1-6.) On March 12, 2004, the BOA was reconvened. (Bassler-Watson Decl. (#96) ¶ 38); (Obiajulu Dep. (#95) 317:22-318:6.) At that time, Roger Ceballos served as Rite Aid's representative, while Jason Gately served as Local 995's representative. (Obiajulu Dep. (#95) 317:1-6.) The BOA ultimately denied the grievance in full. (Gately Decl. (#98) ¶ 14.) Subsequent to the BOA's decision, Obiajulu filed an unfair labor practice charge with the National Labor Relations Board ("NLRB"), alleging that Local 995 breached its duty of fair representation in its processing of the grievance. (Magnini Decl. (#97) Ex. S.) The charge, however, was dismissed. Id. Subsequent to the dismissal, Obiajulu initiated the instant litigation, claiming that he was unlawfully suspended, that his Weingarten rights were violated, breach of the duty of fair representation, that the defendants committed violations of 42 U.S.C. § 1981, disparate treatment, and civil conspiracy. (Am. Compl. (#2).) In an earlier order, the Court dismissed Obiajulu's unlawful suspension, civil conspiracy, and Weingarten rights claims, as well as his prayer for punitive damages as to his breach of fair representation claim against the Union. (Order (#22).) Thus, at issue here are Obiajulu's section 1981 claims, his disparate treatment claim, and his duty of fair representation claim.

II. Legal Standard

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The burden of demonstrating the absence of a genuine issue

of material fact lies with the moving party, and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Martinez v. City of Los Angeles, 141 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. Lynn v. Sheet Metal Workers Int'l Ass'n, 804 F.2d 1472, 1483 (9th Cir. 1986); S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982).

If the moving party presents evidence that would call for judgment as a matter of law at trial if left uncontroverted, then the respondent must show by specific facts the existence of a genuine issue for trial. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 250 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 249-50 (citations omitted). "A mere scintilla of evidence will not do, for a jury is permitted to draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation." British Airways Board v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978); see also Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993) ("[I]n the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable jury to conclude that the position more likely than not is true, the court remains free ... to grant summary judgment."). Moreover, "[i]f the factual context makes the non-moving party's claim of a disputed fact implausible, then that party must come forward with more persuasive evidence than otherwise would be necessary to show there is a genuine issue for

trial." Blue Ridge Insurance Co. v. Stanewich, 142 F.3d 1145, 1149 (9th Cir. 1998) (citing Cal. Architectural Bldg. Products, Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that are unsupported by factual data cannot defeat a motion for summary judgment. Taylor v. List, 880 F.2d 1040, 1045(9th Cir. 1989).

III. Analysis

A. Duty of Fair Representation Claim

"A union owes a duty of fair representation to those it represents, and an employer must honor the terms of a [collective bargaining agreement] to which it is a party." Bliesner v. Commc'n Workers of America, 464 F.3d 910, 913 (9th Cir. 2006). Where, as here, a plaintiff alleges a breach of the duty of fair representation and a breach of the collective bargaining agreement, prevailing on the duty of fair representation claim requires the plaintiff to "show that there has been both a breach of the duty of fair representation and a breach of the [collective bargaining agreement]." Id. at 913-14.

Assuming, *arguendo*, that Obiajulu has created a triable question of fact as to whether Rite Aid breached the Agreement, he has failed to meet his summary judgment burden as to the fair representation claim. A union breaches its duty of fair representation "only when [its] conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967). However, it has never been the law of this Circuit that a union "has acted in an arbitrary manner where the challenged conduct involve[s] the union's judgment as to how best to handle a grievance." Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985).

Here, Local 995 timely filed the original grievance and conducted the initial first-step meeting with Rite Aid on January 21, 2004. (Bassler-Watson Decl. (#96) ¶ 15); (Obiajulu Dep. (#95) 374:19-376:18.) And at that meeting, Local 995 convinced Rite Aid that a three-day suspension, not immediate discharge, was the appropriate disciplinary measure. (Bassler-Watson Decl. (#96) ¶ 15); (Obiajulu Dep. (#95) 186:2-187:11, 379:8, 381:6-19). Following the initial first-step meeting, Obiajulu refused to accept the three-day suspension. (Obiajulu Dep. (#95) 386:14-390:25.) The offer was then withdrawn and revoked and Rite Aid suspended Obiajulu until February 9, 2004. Id.

At that time, Obiajulu returned to work and Local 995 asked for a second first-step meeting, in light of the additional discipline imposed by Rite Aid. (Bassler-Watson Decl. (#96) ¶ 28.) Prior to the meeting, Bassler-Watson met with Obiajulu to discuss his demands, which included a written apology, damages for pain and suffering, and a guarantee of employment. (Bassler-Watson Decl. (#96) ¶¶ 30-31, Exs. H, J); (Obiajulu Dep. (#95) 438:10-15). Despite what Local 995 considered to be Obiajulu's unreasonable demands, it argued on behalf of Obiajulu that there was no "just cause" for the suspension and that the three-week suspension was not warranted by the facts. (Bassler-Watson Decl. (#96) ¶ 32.) Rite Aid was not persuaded. Id. ¶ 33. As a result, Local 995 then referred the grievance to the BOA as required by the collective bargaining agreement. Id. ¶ 34, Ex. L; (Obiajulu Dep. (#96) 454:7-20.) And in its judgment, the BOA, which included Jason Gately as Local 995's representative, concluded that the grievance should be dismissed, finding that Obiajulu's efforts to purchase the chairs at an advance sales price constituted improper self-help and exhibited insubordination in light of the fact that he knew his district manager had expressly forbid him from purchasing the chairs. (Gately

Decl. (#98) ¶ 14.) Under the terms of the collective bargaining agreement, the BOA's decision was final and binding, and Local 995 did not have the authority to refer the grievance to arbitration. (Bassler-Watson Decl. (#96) Ex. A, p.13.)

To the extent that the aforementioned actions involve Local 995's judgment, no reasonable jury could conclude that they were discriminatory or undertaken in bad faith; and as to those actions that were ministerial or procedural in nature, they cannot reasonably be characterized as arbitrary, discriminatory, or in bad faith. See Wellman v. Writers Guild of America West, Inc., 146 F.3d 666, 670 (9th Cir. 1998) (holding that where alleged misconduct involves a union's procedural or ministerial duties, the question is whether that conduct was arbitrary, discriminatory, or in bad faith; but where the alleged misconduct involves a union's judgment, the plaintiff may prevail only where the union's conduct was discriminatory or in bad faith). To the contrary, a review of the evidence in the record can only be said to suggest that that Local 995 acted in a skillful, conscientious and dedicated manner, despite obvious deficiencies in Obiajulu's grievance.

In opposition to Local 995's motion, Obiajulu attempts to tender a genuine issue of fact by claiming that Local 995 never believed his grievance was meritorious. (Opp'n (#125) 7.) Obiajulu, then, apparently contends that Local 995's representation was not offered in good faith. His claims, though, are wholly conclusory and unsupported by evidence. See id. Obiajulu cites not one declaration, deposition, affidavit, or document in support of the proposition that Local 995 acted in bad faith. Id. Moreover, even if it were true that Local 995 did not believe Obiajulu's grievance to be meritorious, such a belief does not require the conclusion that the Union

acted in bad faith in the processing of his grievance or in refusing to take it to arbitration. See Moore v. Bechtel Power Corp., 840 F.2d 634, 637 (9th Cir. 1988) (noting that "disagreement between a union and an employee over a grievance, standing alone, [does not] constitute evidence of bad faith..."). Consequently, because Obiajulu has failed to create a genuine issue of material fact for trial as to his duty of fair representation claim, that claim is hereby dismissed.

B. 42 U.S.C. § 1981 Claim Against Local 995 and Bassler-Watson

42 U.S.C. § 1981 states in relevant part:

> (a) ... All persons within the jurisdiction of the United States shall have the same rght in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment pains, penalties, taxes, licenses, and actions of every kind, and to no other.
>
> (b) ... For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits and privileges, terms, and conditions of the contractual relationship.

In this Circuit, section 1981 claims brought in the context of employment are evaluated the same as those claims brought under Title VII. El-Hakem v. BJY, Inc., 415 F.3d 1068, 1073 (9th Cir. 2005). Thus, courts apply the burden-shifting analysis outlined in McDonnell Douglas

Corp. v. Green, 411 U.S. 792, 802-03 (1973). Lindsey v. SLT Los Angeles, LLC, 447 F.3d 1138, 1144 (9th Cir. 2006) (citations omitted). First, the plaintiff must satisfy the initial burden of establishing a prima facie case of discrimination. Id. If the plaintiff satisfies that burden, the defendant must offer a legitimate nondiscriminatory reason for the adverse action. Id. If the defendant does so, the plaintiff must show that the offered reason was pretext for intentional discrimination. Id.

In order to make out a prima facie case of discrimination against a union, a plaintiff "must produce evidence that the grievances of similarly situated white employees were treated differently than was his grievance by the Union." Sanders v. Culinary Workers Union Local No. 226, 804 F. Supp. 86, 98 (D. Nev. 1992) (citing McDonnell Douglas Corp., 411 U.S. at 804 and Gay v. Waiters' & Dairy Lunchmen's Union, 694 F.2d 531, 537 (9th Cir. 1982). In this case, Obiajulu has presented no evidence of a similarly situated white employee who was treated differently, i.e., that a white employee being suspended for insubordination was not represented as far as a determination by the BOA. See (Opp'n (#125).) As such, he has failed to meet his burden as to the prima facie case.

That said, even assuming that Obiajulu has met his prima facie burden, Local 995 offers a legitimate nondiscriminatory alternative for its decision not to seek arbitration – that the grievance was not meritorious. (Mot. Summ. J. (#94) 28.) Obiajulu argues that his grievance was meritorious and, therefore, he has met his burden to refute Local 995's proffer. See (Opp'n (#125).). However, that is not the case. Obiajulu relies on the witness statement of Karen Green for this proposition. Id. at 8. In that statement, Green said that Obiajulu was told that the reason why he could not purchase the

chairs were three-fold, "(1) there wouldn't be chairs for the upcoming sale, (2) they were short handed and no one could ring up 20 chairs, (3) there wasn't any storage room for 20 chairs." Id. Apparently, Obiajulu means to suggest that the underlying justifications for Molina's prohibition, according to Green, were not necessarily applicable outside of the store he worked and therefore, her statement did not bar him from purchasing chairs at a different Rite Aid, which would mean that he was not acting in an insubordinate way when he purchased them, making his grievance meritorious. That position, though, is belied by the first of the three justifications which can only reasonably interpreted as being applicable to all Rite Aid stores, leading to the conclusion that Molina's statement was a prohibition on the purchase of chairs in advance of the sale from any store. Moreover, even if it could be construed as evidence of a narrower interpretation of Molina's statement, the evidence is not sufficiently substantial and specific so as to call the Union's belief that Obiajulu was acting in an insubordinate manner when he purchased the chairs into question. See Godwin v. Wesson, Inc., 150 F.3d 1217, 1221 (9th Cir. 1998) (holding that where circumstantial evidence of pretext is offered, that evidence must be both specific and substantial); Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1063 (9th Cir. 2002) (noting that courts "only require that an employer honestly believed its reason for its actions, even if its reason is foolish or trivial or even baseless.") (internal quotation omitted). Thus, for the foregoing reasons, Obiajulu's section 1981 claim against the Union and Bassler Watson is hereby dismissed.

C. Disparate Treatment Claim Against Rite Aid and Molina

The same burden shifting scheme applied as to Obiajulu's section 1981 claims applies to his disparate

treatment claim. El-Hakem, 415 F.3d at 1073. First, the plaintiff must satisfy the initial burden of establishing a prima facie case of discrimination. Lindsey v. SLT Los Angeles, LLC, 447 F.3d 1138, 1144 (9th Cir. 2006) (citations omitted). If the plaintiff satisfies that burden, the defendant must offer a legitimate nondiscriminatory reason for the adverse action. Id. If the defendant does so, the plaintiff must show that the offered reason was pretext for intentional discrimination. Id. In order to meet his prima facie burden in the employment context, Obiajulu must show that (1) he belongs to a protected class; (2) was qualified for the position and was performing satisfactorily; (3) he was subject to an adverse employment action; and (4) similarly situated employees received more favorable treatment. Moran v. Selig, 447 F.3d 748, 753 (9th Cir. 2006).

In this case, Obiajulu has failed to show that he was performing his job satisfactorily and, therefore, has failed to meet his prima facie burden. It is undisputed here that Obiajulu was told by his supervisor, Molina, that he could not purchase the resin chairs at the sale price before the public was afforded the same opportunity. (Obiajulu Dep. (#95) 66:4-22, 78:4-23.) It is also undisputed that with this knowledge, Obiajulu went to a second Rite Aid and, without informing the manager there as to Molina's statement, purchased the chairs at the advance sale price. Id. at 100:16-101:19, 109:18-110:1, 117:23-25, 126:08-18, 129:09-129:22, 112:19, 117:9-118:3, 119:25-120:9. Obiajulu also does not dispute that he used his employee discount on a sale item, id. at 129:9-25, a violation of company policy, (Soliz Decl. (#121, ¶ 5, Ex. A p. 32.) This evidence alone suggests that Obiajulu acted in direct contravention of Molina's statement that he could not purchase the chairs at the sale price thus indicating that he was acting in an insubordinate

manner and not performing his job "well enough to rule out the possibility that [he] was fired for inadequate job performance." Pejic v. Hughes Helicopters Inc., 840 F.2d 667, 672 (9th Cir. 1988).

However, even if Obiajulu could be said to have met his prima facie burden, Rite Aid has offered a legitimate, nondiscriminatory justification for his suspension. Specifically, Rite Aid claims that Obiajulu was suspended for his insubordinate behavior, constituted by his purchase of the chairs at the sale price, as well as his use of his employee discount on a sale item. (Mot. Summ. J. (#114) 17-20.) Obiajulu, though, has not presented sufficient evidence to call that justification into question. Here, again, Obiajulu cites the witness statement of Kelly Green. (Opp'n (#126) 8.) However, like in the case of Obiajulu's section 1981 claim against the Union, it is insufficient here. The statement is not sufficiently specific and substantial such that a reasonable jury conclude that it undermines Rite Aid and Molina's belief that Obiajulu was acting in an insubordinate manner. Moreover, it does not bear on the evidence of insubordination reflected by Obiajulu's use of his employee discount, which serves as an alternative grounds for the insubordination here. Therefore, the Court hereby dismisses Obiajulu's disparate treatment claim.

D. Section 1981 Claim Against Rite Aid and Molina

Obiajulu's section 1981 claim is analyzed under the same framework as his disparate treatment claim. El-Hakem v. BJY Inc., 415 F.3d 1068, 1073 (9th Cir. 2005). As such, because Obiajulu has failed to make out a prima facie case of discrimination and because he has failed to rebut Rite Aid's legitimate, nondiscriminatory reason for the challenged action, his section 1981 claim against Molina and Rite Aid is hereby dismissed. In doing so the

Court adopts the rational described in its dismissal of Obiajulu's disparate treatment claim.

E. Rite Aid and Molina's Motion for Sanctions

A Court may impose sanctions under Fed.R.Civ.P. 11 for frivolous claims. Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002). Frivolous claims are those that are legally or factually baseless from an objective perspective and submitted absent a reasonable and competent inquiry. Id. (citing Buster v. Greisen, 104 F.3d 1186, 1190 (9th Cir. 1997)). In this case, the Court finds that Obiajulu's claims were not objectively baseless or submitted without reasonable inquiry and, therefore, denies Rite Aid and Molina's motion.

IV. Conclusion

Accordingly, IT IS ORDERED that Defendants Local 995 and Bassler-Watson's Motion for Summary Judgment (#93) is GRANTED.

IT IS FURTHER ORDERED that Defendants Rite Aid and Molina's Motion for summary Judgment (#114) is GRANTED.

IT IS FURTHER ORDERED that Defendants Rite Aid and Molina's Motion for Sanctions (#131) is DENIED.

DATED: This 11th day of October, 2007.

UNITED STATES DISTRICT JUDGE

C-1

COLLECTIVE BARGAINING AGREEMENT

between

RITE AID CORPORATION
dba RITE AID DRUG STORES

and

PROFESSIONAL, CLERICAL AND MISCELLANEOUS
EMPLOYEES TEAMSTERS LOCAL UNION NO. 995

6/3/02 through 6/4/2005

INDEX

ARTICLE		PAGE
I	Recognition	C-3
II	Principles of Pharmacy Profession	C-4
III	Employment Procedure	C-6
IV	Payment for Administration	C-8
V	Union and Employer Rights	C-9
VI	Hours of Work and Overtime	C-10
VII	Holidays	C-12
VIII	Vacations	C-13
IX	Leaves of Absence	C-15
X	Funeral Leave	C-15
XI	Salary Continuation	C-16
XII	Job Injury	C-16
XIII	Seniority	C-16
XIV	Layoff Notice	C-18
XV	Discharge	C-18
XVI	Grievances	C-20
XVII	Wages and Bonuses	C-22
XVIII	Maintenance of Benefits	C-23
XIX	Health & Welfare/Dental & Vision Major Medical/Disability	C-23
XX	Eligibility for Health & Welfare Contributions	C-24
XXI	Life Insurance/Accidental Death and Dismemberment	C-25
XXII	Retirement	C-25
XXIII	Check-off	C-26
XXIV	Uniforms	C-27
XXV	Jury Duty and Witness Pay	C-27
XXVI	Miscellaneous	C-27
XXVII	Successors and Assigns	C-29
XXVIII	Savings Clause	C-30
XXIX	Amendments, Additions, and Waivers	C-30
XXX	Notices	C-30
XXXI	Terms/Terminations/Renewal	C-30

C-3

LABOR AGREEMENT

between

RITE AID CORPORATION
dba RITE AID DRUG STORES

and

PROFESSIONAL, CLERICAL AND MISCELLANEOUS
EMPLOYEES LOCAL UNION NO. 995

* * * * * * * * * * * * *

THIS AGREEMENT, entered into as of this third day of June, 2002, by and between RITE AID CORPORATION dba RITE AID DRUG STORES (hereinafter referred to as the "Employer"), and the PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES LOCAL UNION NO. 995, (hereinafter referred to as the "Union").

ARTICLE I. RECOGNITION.

Section 1 - Bargaining Unit. The Employer recognizes the Union as the sole collective bargaining representative for registered pharmacists employed by the Employer at each individual Rite Aid store in the greater Las Vegas, Nevada area but excluding all nonregistered pharmacy department employees, sales employees, stock employees, office clerical employees, administrative employees, guards, watchmen and supervisors within the meaning of the Act.

New store openings, within the geographic jurisdiction of this Agreement, at least 50% of the initial staffing of pharmacists will come from the existing bargaining unit. Accordingly, the Company will recognize IBT Local 995

as the bargaining representative for the store and this agreement will apply.

All pharmacy departments shall be allowed one exclusion, the Pharmacy Manager as designated by the Employer, provided there is at least one full time bargaining unit pharmacist employed at the store. The Pharmacy Manager shall be permitted to perform any and all work designated by the Employer without restriction.

Current Head Pharmacists will be "grandfathered" and allowed to remain in their current positions as Head Pharmacists in the bargaining unit, subject to Article XV. Additionally, if current Head Pharmacists are transferred to a "new" store they will be allowed to retain their position as Head Pharmacist in the bargaining unit. In the event a Head Pharmacist is required by the Employer to transfer to a "new" store they will not be adversely affected relative to the store bonus.

Section 2 - Definition. A pharmacist as used herein is a professional employee to whom a current and valid license to practice pharmacy in the State of Nevada has been issued by the Nevada State Board of Pharmacy.

ARTICLE II. PRINCIPLES AND THE PHARMACY PROFESSION.

Section 1 - Principles. The foremost obligation of the Employer and the pharmacist is to assure the public that prescriptions and related matters are handled in accordance with the highest professional standards of pharmacy. The Employer and the pharmacist pledge full cooperation in such mutual undertaking.

Section 2 - Declarations. To make possible the fullest attainment of the above stated objectives, the following declarations shall apply:

A. The Employer shall make every possible endeavor to provide work surroundings and conditions which will prevent the pharmacist from being interrupted or distracted unnecessarily while compounding prescriptions.

B. The Pharmacists shall have responsibility and control of the prescription department, including control of any and all keys to the prescription department and all other areas where drugs are stored that the pharmacists are responsible for and shall see that cleanliness and organization are maintained therein in accordance with state and federal laws and Employer policies. However, pharmacists shall not be required to do janitorial work. The Employer shall has the janitorial work performed on a regular basis.

C. The pharmacist shall compound and dispense prescriptions and sell pharmaceuticals and medicines. He shall not be required to regularly perform additional functions outside the prescription department.

D. On all matters set forth in this Agreement and in the handling of operational problems and grievances, pharmacist shall be responsible to the Store Manager.

E. The pharmacist shall be responsible on any questionable prescription to contact the doctor to determine if the prescription is as prescribed by the doctor. If the doctor approves the prescription as correct, the pharmacist shall have no further responsibility and no liability except for the requirements as prescribed by Nevada State Law.

ARTICLE III. EMPLOYMENT PROCEDURE

Section 1 - Hiring. In the employment of pharmacists for all work covered by this Agreement, the following procedure shall govern:

A. The Union shall establish and maintain separate, open and non-discriminatory employment lists for pharmacists desiring employment and such pharmacists shall be registered and dispatched subject to the provisions of this Article.

B. The Employer shall first call the dispatching office of the Union for such applications as he may from time to time need, and the dispatch office shall furnish to the Employer the required number of qualified and competent applicants requested by the Employer.

C. The dispatching office will furnish in accordance with the Employer's request from among those entered on its lists, the required number of who most nearly meet qualifications required by the Employer, and the selection of pharmacists for referral shall be on a non-discriminatory basis and shall not be based upon, or in any way affected by, Union membership, bylaws, rules, regulations, constitutional provisions or any other aspect or obligation of the Union membership, policies or requirements or upon the individual's race, color, religion, sex, age or national origin.

Section 2 - Notification of Vacancies.

A. In order to give the Union an opportunity to refer those applicants who most nearly meet his specifications, the Employer agrees to give the dispatch office as much advance notice of the anticipated opening as is possible under

the circumstances then prevailing. At the time such notice is given to the Union the Employer will specify the date the vacancy is to be filled.

B. If within forty-eight (48) hours of the date specified, the dispatch office has failed to refer the Employer the required number of applicants, the Employer may procure applicants from any other source.

C. In recognition of this fact that the Union is the bargaining agent for all pharmacists in the bargaining unit, it is agreed that all pharmacists hired to perform work under the terms of this Agreement will be required to report to the Union within five (5) days of their date of hire and that the Union shall promptly issue to the pharmacist written verification that the pharmacist has been hired in accordance with the terms of this Agreement, if such in fact is the case.

Section 3 - Mutual Obligations. In the administration of this provision it is understood and agreed that the dispatch office will immediately notify the Employer if no qualified pharmacists are available. Similarly, the Employer shall promptly notify the dispatch office of his decision with respect to pharmacists referred by the Union.

Section 4 - Right of Selection. Subject to the provisions of this Article, the Employer shall be the sole judge as to the competency and qualifications of all applicants for employment. The Employer may reject any job applicant for employment. The Employer may reject any job applicant referred by the Union provided that no applicant shall be discriminated against because of his

membership or non-membership in the Union. Employer also reserves the right to transfer in any pharmacist to the Las Vegas stores without utilizing the hiring hall.

Section 5 - Posting Requirements. The Union shall post in places where notices to registrants are customarily posted, all provisions relating to the hiring procedures. The Employer shall likewise post these hiring procedures in places where notices to pharmacists are customarily posted.

Section 6 - Time Limits. In computing the forty-eight (48) hour time limit referred to in Article III, Saturdays, Sundays and recognized holidays shall be excluded. If any Employer needs a pharmacist on one or more of such days, he may hire a temporary pharmacist until such time as the Union has been given an opportunity to refer applicants for the job in accordance with the procedures of this Article III.

ARTICLE IV. PAYMENT FOR ADMINISTRATION.

Section 1 - Union Security.

A. Nothing in this Article shall be construed as requiring any person to become, or to remain, or not remain, a member of the Union as a condition of Employment.

B. The parties hereto recognize, however, that under the laws of the United States, the Union is the exclusive bargaining unit for all employees of the Employer within the bargaining unit, whether members of the Union or not, and further, that under the laws of the State of Nevada, it is unlawful for the Employer to pay any pharmacist any wages, salary, or compensation lower than that agreed upon through this Agreement, so that the benefits of this Agreement are extended by law to non-

union as well as union pharmacists, while the expense of negotiating this Agreement, as well as the continuing expenses of administering its provision and of processing grievances hereunder, has been and will continue to be borne by the Union.

C. Such payments may be made to the Union by each of the pharmacists directly or by means of payroll deduction pursuant to wage authorization signed by such pharmacist, one (1) signed copy of which shall be deposited with the Union, which wage authorization shall be valid for the period of one (1) year from date of its delivery to the Employer, and from year to year thereafter, until terminated in writing by the pharmacist in accordance with the dues check-off conditions authorization.

Section 2 - Indemnification. The Union will indemnify and save the Employer harmless against any and all claims, demands, or other forms of liability which may arise out of or by reason of any action taken or not taken by the Employer at the request of the Union in accordance with the provisions of this Article.

ARTICLE V. UNION AND EMPLOYER RIGHTS.

Section 1 - Union Representatives. The Employer agrees that the authorized representative of the Union shall be granted access at any reasonable time to those public areas of the premises where pharmacists represented by the Union are employed. The Union will conduct its business as expeditiously as possible in order to minimize the interference with the Employer's business.

Section 2 - Shop Stewards. The Union may select from among the pharmacists, shop stewards whose function

in addition to their normal work shall be to report to their business representative grievances or alleged infractions of this Agreement. The Union agrees to notify the Employer in writing of the pharmacists selected as shop stewards.

Section 3 - Management Rights. Except as otherwise expressly and specifically provided in this Agreement, the Union recognizes and agrees that the supervision, management and control of the Employer's business, operations, work force and store are exclusively vested in the management of the Employer.

ARTICLE VI. HOURS OF WORK AND OVERTIME.

Section 1 - Scheduling and Hours.

Pharmacists will work on an 80 Hour Base Bi-weekly Schedule. An 80 Hour Bi-weekly Schedule, schedules a pharmacist to work for a two week period of time (80 hours). Shifts may vary from 6 hours a day to 12 hours a day.

Pharmacy working hours during a single week may fluctuate from 32 hours for a single week to 48 hours in a week. However, after the two week period is over, a pharmacist will have worked 80 hours.

The Pharmacy District Manager, with the input of the individual store pharmacists, initially sets the schedule for a six month period of time. Pharmacists may, on their own, adjust or change their schedule on a store by store basis as long as it is mutually agreeable between the affected pharmacists.

The Pharmacy District Manager should be notified of major schedule changes. Assuming the Pharmacy is appropriately covered, the Pharmacy District Manager will consent to mutually agreeable changes.

The Base Schedule will be as follows:

Week 1	SUN	MON	TUE	WED	THUR	FRI	SAT
Pharmacist A	0	1-9	9-3	9-9	0	1-9	9-5
Pharmacist B	10-6	9-3	3-9	0	9-9	9-3	0
Week 2	SUN	MON	TUE	WED	THUR	FRI	SAT
Pharmacist A	10-6	9-3	3-9	0	9-9	9-3	0
Pharmacist B	0	1-9	9-3	9-9	0	1-9	9-5

80 hours each pay period (48 + 32)
Alternates Wed/Thurs as day off during week

Section 2 - Overtime.

Some overtime will be paid as per Rite Aid overtime policy (attachment B). Overtime should be expected when: 1) Working three or more hours beyond your scheduled shift on any day, 2) when working at another store on scheduled time off, 3) when working a holiday.

Effective June 4, 2005 employees will be compensated at their straight time hourly rate of pay in addition to holiday pay as defined in the Holidays Article of this Agreement when required to work on a recognized holiday.

Section 3 - Layoffs. Layoffs must be consistent with seniority section.

Section 4 - Schedules.

1. Posting Notice. The Employer shall post the bi-weekly work schedule, which shall include starting and finishing time, no later than Friday of the preceding week and thereafter such schedule shall be changed only in cases of emergency or by mutual agreement of the Employer and pharmacists concerned. The

Union shall be given a copy of any schedule changes.

2. Days Off. The Employer shall have the right to schedule pharmacist's days off. Wherever possible, consecutive days off shall be scheduled. Pharmacists shall have at least eight (8) hours off between shifts.

Section 5 - Holiday Notice. There shall be at least forty-eight (48) hours notice of holiday or overtime work when the Employer has advance notice of the need for such work.

Section 6 - Rest Periods. All pharmacists shall receive a rest period of fifteen (15) minutes during every four (4) hours of work. When more than one (1) pharmacist is on duty, relief will be provided by the other pharmacist. If only one (1) pharmacist is on duty, he shall take his relief throughout his shift.

ARTICLE VII. HOLIDAYS.

A. The following seven (7) days shall be recognized as paid holidays:
New Year's Day
Memorial Day (last Monday in May)
July 4th
Labor Day (1st Monday in September)
Thanksgiving Day
Christmas Day
Employee's Birthday

If any holiday falls on a Sunday, such holiday shall be observed on the following Monday; except Christmas and New Year's Day, which are always celebrated on December 25th and January 1st, respectively.

B. Holiday Pay. Holiday pay for full time pharmacists shall be eight (8) hours at the straight time rate. It is understood that in order to qualify for holiday pay, the pharmacist must work at least one (1) work day during the month in which the holiday falls. To be eligible for a paid holiday, the employee must work the full scheduled day before and after the holiday or provide a written doctor's excuse or be excused by his/her supervisor for the absence. Effective with Pharmacists hired after December 4, 1994, there will be a twelve (12) month seniority requirement for holiday pay eligibility.

C. Part Time Employees. Holiday pay for pharmacists who work less than forty (40) hours per week shall be based on twenty percent (20%) of the pharmacist's average straight time hours worked per week in the ninety (90) days immediately preceding the holiday.

D. Pharmacist's Birthday Holiday. Said holiday shall be taken by mutual agreement between the Employer and the pharmacist on any day during the year.

ARTICLE VIII. VACATIONS.

Section 1 - Computation Date. Vacation shall be earned and computed as of the pharmacist's anniversary date (day and month of original employment). One (1) week's vacation shall be the equivalent of one week of salary, not to exceed forty (40) straight time hours.

Section 2 - Vacation Pay. Vacation pay shall be paid at the current hourly rate. During the first year of employment it will be based on the first twelve (12) months worked.

Section 3 - Earned Vacation. At a pharmacist's first vacation anniversary date he shall earn one (1) week vacation. At the pharmacist's second anniversary date he shall earn two (2) weeks vacation. At the pharmacist's fifth vacation anniversary date he shall earn three (3) weeks vacation. At the pharmacist's fifteenth anniversary date he shall earn four (4) weeks vacation. At the pharmacist's twentieth anniversary date he shall earn five (5) weeks vacation.

Section 4 - Termination Vacation. At termination a pharmacist will be paid at the current hourly rate, any vacation earned but not taken as of the last anniversary date, and in addition thereto, will be paid the current hourly rate of his earnings for each week due from the anniversary date to his date of termination. Termination vacation will not be paid or computed for any pharmacist who has not worked past his first twelve (12) months, or to any pharmacist who is terminated for theft, dishonesty, or willful destruction of Company property.

Section 5 - Vacation Schedules. Vacations will be scheduled by seniority and assigned by March 1st and taken at any time mutually agreeable during the twelve (12) months following the pharmacists anniversary date.

Section 6 - Vacation Holidays. Paid holidays occurring during a vacation shall be granted as an additional day's paid vacation or pay in lieu thereof.

Section 7 - Successor Firm. A change in ownership, the adding of a partner, the shift from a partnership to a corporation or the shift of employer name shall not constitute a break in service. The successor will give full credit to the accumulated vacation credits at the time of the shift.

Section 8 - Vacation Reliefs. Wherever possible, vacation reliefs shall be provided. The Employer will attempt to secure vacation replacements.

ARTICLE IX. LEAVES OF ABSENCE.

An unpaid leave of absence is time off without pay with no loss in standing or seniority and is granted to pharmacists contingent upon a twelve (12) month seniority requirement for eligibility.

Leave of absences are granted for the following reasons:

A. Illness or accident - up to six (6) months.
B. Industrial accident - up to six (6) months.
C. Maternity leave: Pharmacists will be granted maternity leave of up to six (6) months. Pharmacists will be allowed to work through their confinement period provided they can satisfactorily perform their jobs and have a medical clearance.
D. Military service: As determined by the Veteran's Reemployment Act.
E. Personal leaves: Requested leaves may be granted for just and sufficient cause, such as an illness in the immediate family, or any other just and compelling reason. Such personal leaves will be granted up to sixty (60) days and are subject to prior approval by the Employer. Family leaves will be granted in accordance with the Family Medical Leave Act.

ARTICLE X. FUNERAL LEAVE.

Funeral leave for all pharmacists shall be provided for the purpose of attending the funeral of a member of the pharmacist's immediate family.

Pay for such leave shall be at the straight time rate for the hours scheduled for each work day lost because of such

absence to a maximum of three (3) consecutive days. Verification of time required for such paid leave shall be supplied to the Employer by the pharmacist if requested. Immediate family can be defined as the pharmacist's spouse, child, mother, father, brother, sister, mother-in-law, father-in-law, or other relatives living in the pharmacist's home.

ARTICLE XI. SALARY CONTINUATION AND LONG TERM DISABILITY.

Eligible Pharmacists shall be covered by the Rite Aid salary continuation plan as it may be modified from time to time. Additionally, eligible pharmacists will be allowed to participate in the Company Long Term Disability plan. The current salary continuation plan provides for 100% of salary for the first two (2) weeks and 75% of salary for the next eleven (11) weeks. Long term disability starts when employees have exhausted their salary continuation benefits.

ARTICLE XII. JOB INJURY.

When a pharmacist is injured on the job there shall be no deduction from the pharmacist's pay for the day in which the pharmacist was injured and reported for medical care. When such pharmacist returns to work following the injury, but requires medical treatment as a result of the same injury, the Employer shall allow time off for said medical treatment.

ARTICLE XIII. SENIORITY.

Section 1. Seniority as used herein is defined as the right accruing to pharmacists for continuous employment with the Employer.

Section 2. Computation and Loss of Seniority. Seniority shall be computed from the pharmacist's date of hire and

shall be broken only by the following:

1. Quit.
2. Discharge.
3. Layoff for twelve (12) months or more.
4. Failure to return to work in accordance with the terms of a leave of absence or when recalled after a layoff.

Section 3. Probationary Period. A pharmacist shall be on a probationary period during his first ninety (90) days and thereafter shall be placed on the seniority list as of his last date of hire. The probationary period may be extended by mutual agreement between the Employer and the Union.

Section 4. Seniority shall be bargaining unit wide when it is necessary to layoff or rehire.

Section 5. Vacation seniority lists will be established on a unit wide basis.

Section 6. Part time employees who are scheduled to work twenty-four (24) hours per week or less shall not accrue full time seniority until such time as they are regularly scheduled to work in excess of twenty-four (24) hours per week, and their full time seniority date shall be the date they are first so scheduled.

Section 7. Part time employees shall have precedence of employment over other part time employees according to their part time seniority.

Section 8. Part time employees shall be given the first opportunity for any full time jobs that are available before any new full time employee is hired.

Section 9. Head Pharmacists may elect to drop back to classification of registered pharmacists and receive the registered pharmacist hourly wage rate upon one (1)

week's prior notice to the Employer, provided a full-time position is available.

Section 10. Recall: Bargaining unit employees that have been placed in lay off status will have an obligation to keep the Company aware of their current address and phone numbers throughout the period of time they remain in lay off status. The Company will notify the employee in writing to their last known address, certified - return receipt requested, that the employee is eligible to return to work, with a copy of the recall notice being sent to the Union. The employee will be obligated to make arrangements with the Company to return to work within ninety-six (96) hours of receipt or attempted delivery of the recall notice. Failure on the part of the laid-off employee to report as required above will constitute grounds for termination.

ARTICLE XIV. LAYOFF NOTICE.

The Employer agrees to give one-half (1/2) week's notice or one-half (1/2) week's pay in lieu thereof for each year of service, up to a maximum of four (4) weeks notice or pay in lieu thereof, to pharmacists who are to be laid off, providing that such notice or pay shall not be required in case of discharge for cause. This section does not apply to a reduction of hours.

ARTICLE XV. DISCHARGE.

Rite Aid needs order and discipline to succeed and to promote efficiency, productivity and cooperation among associates. For this reason it is important to recognize that if a Pharmacist violates company work or safety rules or standards of behavior which the company has the right to expect of its associates, fails to perform his/her job in a satisfactory manner, or is involved in conduct which can have an adverse effect on the company, the

Pharmacist will be subject to disciplinary action. Rite Aid utilizes positive discipline as a constructive tool. It is our belief that discipline should be used to shape and strengthen our Pharmacists' interest in company values and goals. However, the company may impose whichever form of discipline it believes is appropriate based upon the Pharmacist conduct, years of service, and the surrounding circumstances, as long as it does not conflict with this contractual agreement.

Section 1. The Employer shall have the right to discharge any pharmacist for just cause. Any pharmacist feeling he has been unjustly discharged has the right to appeal such discharge under the terms of Article XVI, Section 2, provided such protest is filed in writing by the Union to the Employer, within ten (10) working days from the date of discharge.

Section 2. - Written Notice. The parties agree to the principle of progressive discipline, which means the Employer's rules and regulations shall be posted and given to all pharmacists. Pharmacists who violate such rules and regulations shall first be given a written notice. Written notice shall contain all details of the alleged offense and a copy of the written notice shall be given to the Union. The pharmacists will be required to initial the written notice but such initialing shall not be considered agreement with the notice but merely acknowledges receipt of the same.

Section 3. No pharmacist who has passed his probationary period may be terminated, for other than insubordination, a pattern of prescription errors, misconduct, dishonesty or gross negligence without having a prior written notice within three (3) months of a similar or related offense.

Section 4. The Union shall have the right to protest any disciplinary suspension or discharge through the dispute

procedures of the contract. The Union shall have the right to protest any written notice at the time it is used as a basis of disciplinary action or discharge.

Section 5. Investigation Interview. In any instance where an employee to be interviewed and/or interrogated by the Employer or his representative in respect to any alleged violation of the Collective Bargaining Agreement or alleged infraction of Company policies which may result in discipline, the employee shall be afforded the opportunity of calling his Business Representative and having his Business Representative present during such interview or interrogation. Such Business Representative must be available within a reasonable period of time but in no event later than twenty-four (24) hours after such request or the interview may proceed without a Union Representative.

Section 6. Graduate Intern Pharmacists.

Graduate intern pharmacists shall be employed by the Company for no more than seven (7) consecutive months or the length of time required to take the pharmacy exam two (2) consecutive times. If the graduate intern pharmacist fails to pass the pharmacy exam after the second time they will be offered an open pharmacy technician job (if they are currently licensed as a pharmacy technician with the state of Nevada). If the Company has no available positions in Las Vegas, they will be terminated and shall have no recourse to the grievance procedure set forth in this Agreement.

ARTICLE XVI. GRIEVANCES.

Section 1. Only disputes between the Employer and a pharmacist, or the Union, regarding the interpretation, application or alleged violations or any of the terms of this Agreement shall constitute grievances. Grievances shall be taken up in the manner set forth below.

Section 2. Grievances involving discharge must be presented in writing to the Employer's local Pharmacy District Manager or other employer designee within ten (10) working days after the pharmacist is discharged. All grievances involving other discipline must be presented in writing to the Employer's local Pharmacy Development Manager or his/her designee within twenty (20) working days from the date the discipline was issued. All other grievances must be presented in writing to the party to be charged within sixty (60) calendar days from the time of occurrence. Failure to present the grievance or wage claim within the time and manner described shall constitute a waiver of same.

Section 3. When a grievance arises the Union shall notify the Employer's local Pharmacy District Manager or other employer designee and, if the grievance cannot be resolved between the Pharmacy District Manager or other employer designee and the Union within five (5) calendar days after presentation, an Adjustment Board made up of one (1) representative of the Employer and one (1) representative of the Union shall be convened. The Board shall meet within seven (7) calendar days from the date of submission of any grievance referred to it. A majority decision at either step of this grievance procedure shall be final and binding upon the parties.

Section 4. If the Adjustment Board cannot agree upon any question submitted to it within five (5) calendar days after going into conference pertaining to the case, the Board shall then choose an arbitrator who shall have no connection with either party, and the decision of the arbitrator shall be final and binding upon the parties. In the event the members of the Adjustment Board are unable to agree upon who is to be the arbitrator they shall request the Nevada State Labor Commission to submit a list from which the parties shall select the

arbitrator. The Adjustment Board or arbitrator shall have no authority to add to, delete or alter any provision of this Agreement.

Section 5. The members of the Adjustment Board representing the Union and the Employer, if compensated, shall be paid by the respective principals represented by them. The fees and expenses of the arbitrator incurred as a result of arbitration shall be borne one-half (1/2) by the Union and one-half (1/2) by the Employer. Any other expenses shall be paid by the party incurring the same.

Section 6. There shall be no work stoppage, strike, picketing, boycott or lockout during the term of this Agreement.

Section 7. The time limits herein may be extended by mutual agreement of the parties.

ARTICLE XVII. WAGES AND BONUSES.

Section 1. The following salaries are hereby established and shall remain in effect for the life of the Agreement. All salary increases will become effective the first full payroll period following the referenced dates.

Classification	6/2/02	9/22/02	6/2/03	6/2/04
Head Pharmacists	$40.70	$42.20	$43.45	$44.70
Registered Pharmacists	$38.70	$40.20	$41.45	$42.70
Pharmacist Graduate	$14.00	$14.00	$14.00	$14.00

To determine an hourly wage rate, divide the salary by 2080 hours.

Section 2. 24 Hour Store Differential. Each Pharmacist working the shift from 10:00 p.m. to 6:00 a.m. will receive in addition to their normal salary for such period, an additional $1.00 per hour.

ARTICLE XVIII. MAINTENANCE OF BENEFITS.

No salary rate herein provided for shall be considered or interpreted as being other than minimum wage. No salary rate being paid to any pharmacist on or prior to the date of the signing of this Agreement which is higher than a minimum wage rate herein established shall be reduced.

ARTICLE XIX. HEALTH AND WELFARE/DENTAL & VISION/MAJOR MEDICAL/DISABILITY.

Section 1 - Contributions. Effective with the month of July, 2002 based upon employees on the payroll July 1, 2002, and during the term of this Agreement, the Employer shall on or before the fifteenth (15th) day of each month contribute the sum of Three Hundred Ninety-five Dollars and Seventy-seven Cents ($395.77). In addition to the Employer's contribution, the Employer will deduct from each eligible employee's bi-weekly payroll checks the amount of forty dollars ($40.00). Monthly remittances shall be made in the manner prescribed by the Trustees of the Teamsters Security Fund of Southern Nevada and shall be mailed to Zenith Administrators, 101 Convention Center Drive, Suite 600, Las Vegas, Nevada 89109

Section 2 - Penalty for Delinquent Payments. Contributions to the Security Fund shall be delinquent if not received by the fifteenth (15th) day of each month in which such payments are due. Interest at the rate of ten percent (10%) shall be payable on all contributions which are not received by the twenty-fifth (25th) of the month in which such payments are due.

Section 3 - Increases in Contribution. Employer agrees to maintain the current contribution of $395.77 per month for the life of the contract. Any additional monies needed to maintain existing benefits will be paid in the following manner:

Effective for the periods of June 2002 to May 2003, June 2003 to May 2004 and June 2004 to May 2005, on a cumulative basis, the Employer will pay the first twenty-five dollars ($25.00) per eligible employee upon request of the Trust Fund. Any additional monies required during each of the aforementioned time frames up to an additional twenty-five dollars ($25.00) will be paid by the employee. Any additional sums of money needed to sustain existing benefits will be divided equally between the Employer and the employee.

Section 4. The Employer and the Union signatory hereto, agree to accept and be bound by the provisions of the Agreement and Declaration of Trust established by the Teamsters Security Fund for Southern Nevada, as amended, and further agree that the Employer and the Union Trustees of said Trust and their successors in trust, are and shall be their representatives, and they further consent to be bound by the rules and regulations established or as may be established by the Trustees of said Trust Fund.

ARTICLE XX. ELIGIBILITY FOR HEALTH AND WELFARE CONTRIBUTIONS.

The Employer shall make a full month contribution to the Trust Fund for each employee working an average of twenty-four (24) hours per week in each month. Should a given employee establish eligibility and then miss working an average of twenty-four (24) hours per week on a given month, said employee may self-pay the contribution to the Trust Fund in order to maintain their Health and Welfare eligibility.

ARTICLE XXI. LIFE INSURANCE/ACCIDENTAL DEATH & DISMEMBERMENT.

Full time pharmacists are covered under the Rite Aid Drug Stores basic Group Term Life Insurance benefit, and an Accidental Death and Dismemberment benefit at no cost.

Increase Basic Life Insurance benefit. Basic benefit is two times your annual wage at not cost to the Pharmacist. You may purchase more life insurance for yourself in amounts equal to 1, 2, or 3 times your annual wage. Maximum benefit is $250,000.

Accidental Death and Dismemberment. Doubles the amount of insurance coverage (including optional insurance) in the event of accidental death. The dismemberment benefit is payable in case of loss of one or both hands, feet or eyes as a result of an accident either on or off the job.

Each eligible dependent is also covered with $3,000.00 of term life coverage at no cost.

ARTICLE XXII. RETIREMENT.

Section 1 - Acceptance of Provisions of Agreement and Declaration of Trust. The Employer agrees to accept and be bound by the provisions of the Agreement and Declaration of Trust establishing the Western Conference of Teamsters Pension Trust Fund, and further agrees that the Employer Trustees of said Trust Fund and their successors in trust, area and shall be its representatives and consent to be bound by the rules and regulations established or as may be established by the Trustees of such Trust Fund.

Section 2 - Contributions. During the life of the Agreement, the Employer shall contribute the below listed amounts to the Western Conference of Teamsters Pension Trust

Fund on behalf of employees in the bargaining unit. Such sums shall be computed monthly and shall be based upon each straight time hour for which compensation is paid to said employee:

Effective Dates	6/3/02	6/4/05
Contribution Rate	$.70	$.80

The contributions shall be due and payable to the area administration office not later than ten (10) days after the end of each month. The first payment shall be due and payable June, 2002, based upon May, 2002, employment.

In the event the Employer fails to make the monetary contributions in conformity with this section of the Agreement, the Trustees shall be free to take any action necessary to effect collections and the Employer shall pay all costs of collection, including reasonable attorney fees.

Section 3. Effective December 1, 1998 no further contributions will be made to the company retirement plans. Employees will continue to vest for that which they have already earned, but nothing further will be required by the Employer under these plans.

ARTICLE XXIII. CHECK-OFF.

Upon written authorization of a pharmacist in the bargaining unit, the Employer shall deduct from that pharmacist's wages the regular monthly Union membership dues, initiation fee, reinstatement fee or service fees as billed by the Union and submit the monies so collected to the Union. The Employer shall have the responsibility of seeing that all deductions are made as authorized and submitted to the Union by the twentieth (20th) of the month.

ARTICLE XXIV. UNIFORMS.

Each pharmacist shall be furnished with at least two (2) wash-and-wear smocks at no expense to the pharmacist. Such coats shall be replaced if needed as determined by the Employer.

ARTICLE XXV. JURY DUTY AND WITNESS PAY.

The company encourages employees to fulfill civic responsibilities. When you are required to serve on a jury, you will be paid your normal scheduled pay, less any amount received while on jury duty, but only for the time period covered by the subpoena or court order. You must work the remainder of each scheduled work day if you are released early from jury duty. Pay for jury duty shall be limited to ten (10) days over two years.

You will also receive your scheduled pay when serving as a witness on behalf of Rite Aid in a court of administrative proceeding which arises out of, or in connection with your employment, and is for the benefit of Rite Aid. Again, you must reimburse Rite Aid any witness fee received.

ARTICLE XXVI. MISCELLANEOUS.

A. Bond. Wherever the Employer requires the bonding of any pharmacist of the carrying of insurance for the Employer the premium for the same shall be paid for by the Employer.

B. The Employer will carry an insurance policy in the amount of $100,000.00 for each person in each accident, and in the aggregate, $300,000.00 per twelve (12) month period, in order to protect the pharmacist while working on the job against any civil losses for incorrect compounding of prescriptions. The Employer

shall send evidence of such coverage to the Union.

C. Pharmacist's List. The Employer agrees upon request from the Union to furnish a complete seniority list of all pharmacists.

D. Shortages. No pharmacist shall be fiscally responsible for any cash shortages, unless the pharmacist had complete and exclusive access to the funds.

E. Bad Checks. No pharmacist shall be fiscally responsible for any bad checks that are accepted.

F. Meetings.

1. Store Meetings. Time spent in store meetings or in meetings called by the Employer before commencement of the day's work or after the day's work shall be considered as time worked and shall be paid for in accordance with the provisions of this Agreement.

2. Voluntary Meetings. Pharmacists may be invited to attend meetings off the premises of the Employer for educational, promotional, recreational or social purposes. Attendance at such meetings shall be strictly voluntary and no pharmacist shall be disciplined or otherwise discriminated against for failing to attend. The Employer agrees to refrain from any direct or indirect action that violates this understanding.

G. State Pharmacy Board Complaints. Copies of any complaints from the Nevada State Board of Pharmacy regarding any pharmacist covered under this Agreement will be furnished to the pharmacist and to the Union.

H. Polygraph Test. No pharmacist or applicant for employment covered by this Agreement shall be requested or be required by any representative of the Employer to be the subject of a polygraph (lie detector) test for any reason whatsoever. The Employer agrees to refrain from any direct or indirect action that violates this understanding.

I. Bulletin Board. The Employer agrees to provide a bulletin board for the Union, upon which may be posted official notices of Union meetings, elections and social functions as well as working schedules and a summary of the provisions of this Agreement.

J. Pharmacy Cashiers. Cashiers working in the Pharmacy Department shall be under the immediate supervision of the Head Pharmacist.

K. The Employer and the Union agree not to discriminate against any person in regard to hire, tenure of employment or job status because of race, creed, religion, color, national origin, age, sex, disability or Union affiliation.

L. Gender References. All references in this agreement to sex; such as references to "his," "he," or "him" shall also apply to "her," "she," or "hers" and vice versa. References to "they," "them," and "their" shall apply equally to both sexes.

ARTICLE XXVII. SUCCESSORS AND ASSIGNS.

The Employer recognizes that the terms of this Agreement constitute an obligation on the business of the Employer and that during the life of this Agreement and any extension thereof, all terms therein contained shall be binding upon the parties hereto, their successors, transferees, lessees or assigns.

ARTICLE XXVIII. SAVINGS CLAUSE.

In the event that any provision of this Agreement shall be rendered invalid by applicable legislation or be declared invalid by any court or regulatory agency of competent jurisdiction, such action shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions not rendered invalid shall remain in full force and effect. The parties agree to attempt to cure such invalidity by negotiations and to submit the matter to arbitration if such negotiations are unsuccessful.

ARTICLE XXIX. AMENDMENTS, ADDITIONS, AND WAIVERS.

This Agreement is subject to amendment, alteration or addition only by a subsequent written agreement between, and executed by, the Employer and the Union. The waiver or any breach, term or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of any such term or condition. Not withstanding the above, Rite Aid reserves the right to modify Rite Aid benefits without bargaining with or consent from the Union.

ARTICLE XXX. NOTICES.

Wherever written notices are required herein, they shall be given to the addresses noted following signatures on this Agreement, or to such other address as either party may hereinafter designate by written notice.

ARTICLE XXXI. TERM-TERMINATION-RENEWAL.

Except as specifically otherwise provided for herein, this Agreement shall become effective on the 3rd day of June, 2002 and shall continue in full force and effect through June 4, 2005 and from year to year thereafter unless

either party hereto shall notify the other in writing by certified mail no less than sixty (60) days prior to June 4, 2005, or the 4th of June of any succeeding year of a desire to terminate, modify or amend this Agreement. In the event that neither party gives the sixty (60) day notice as specified above, the entire Agreement shall automatically be renewed for the succeeding twelve (12) month period from June 4, 2005 and from June 4th of any succeeding year, as the case may be.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on this 20th day of February, 2003.

For the Employer:

RITE AID CORPORATION

By Brad Dagg

For the Union:

PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, TEAMSTERS LOCAL UNION NO. 995

By Mike Magnani
Mike Magnani
Secretary-Treasurer

C-32

Memorandum Confirming Telephone Conversation of Tuesday, November 12, 2002

PROFESSIONAL, CLERICAL AND MISCELLANEOUS
EMPLOYEES LOCAL UNION 995
300 Shadow Lane • Las Vegas, Nevada 89106
702-385-0995 • Fax 702-385-4410

MIKE MAGNANI, Secretary-Treasurer
ROB ROVERE, President
TONY SASSO, Vice-President
DEANN PICCINETTI, Recording Secretary
Trustees, ED RUDD, JAMES F. DUNBAR, BRIAN VONDEROHE

November 15, 2002

Mr. Brad Sapp
Director of Labor Relations
Rite Aid Corporation
15350 SW Sequoia Parkway, #350
Portland, Oregon 97224

Re: Arbitrator Panel

Dear Mr. Sapp:

This memorandum is intended to confirm our telephone conversation of Tuesday, November 12, 2002 as it relates to an arbitrator panel to be used in place of the use of a Federal Mediation and Conciliation Service panel.

The panel of arbitrators that the parties to the Agreement will select an arbitrator from will be:

1) Wayne Estes
2) Joe Gentile
3) Gerald McKay
4) Ken Perea
5) Lionel Richman

The determination regarding who strikes the first name will be determined by lot should the parties not agree to the use of a specific arbitrator.

Please execute both originals, return one to my office for my files and retain the other for your files.

Sincerely,

_____
Mike Magnani
Secretary-Treasurer
MN/ks
cpeiu#537/afl-cio

_____
Brad Sapp, Dir. of Labor Relations
Rite Aid Corporation

Date: 11/20/02

D-1

Rite Aid Settlement and Release Document

Case2:04-cv-01329-BES-RJJ, Document 125-2,
Filed 04/16/2007, Page 2 of 27

SETTLEMENT AND RELEASE

Rite Aid Corporation, Professional, Clerical and Miscellaneous Employees Local Union 995, and Raymond Obiajulu enter into the following agreement for the purpose of settling an instant dispute arising from a grievance filed with the Company without the necessity of further litigation or arbitration.

The parties explicitly agree as follows:

1. The parties agree that there shall be no publicity with regard to the terms of this Settlement and Release.
2. Rite Aid Corporation, Professional, Clerical and Miscellaneous Employees Local Union 995 and Raymond Obiajulu agree that Raymond will receive a last and final write up, all time spent on suspension will be without pay, and Raymond will be returned to work on the next schedule.
3. Raymond Obiajulu further understands and agrees that the only consideration which he is to receive is that specifically set forth in this document.
4. It is further understood and agreed by the parties that this settlement is entered into without precedent to either side and will not be used, nor be of any evidentiary value whatsoever, in any future dispute involving other employees to establish a practice.
5. Raymond Obiajulu understands and agrees that he is waiving and releasing the Company, its

directors, officers, agents and employees of and from any and all claims of every kind and nature whatsoever which he now has or ever had against the Company, its officers, directors, agents and or employees arising out of his employment and/or termmination by the Company. Further, that he is relinquishing all rights under the Collective Bargaining Agreement and agreeing to bring no actions in any State or Federal Court of law or equity and will bring no actions against the Company, or against Professional, Clerical and Miscellaneous Employees Local Union 995 through any Federal or State government agency. Further, if such actions are currently filed by Raymond Obiajulu whether such actions be through a governmental agency or through any State or Federal court of law or equity, that in consideration of the terms of this settlement and agreement, Raymond Obiajulu agrees to withdraw any such pending actions and/or claims.

6. Professional, Clerical and Miscellaneous Employees Local Union 995 agrees to withdraw the grievance with prejudice.
7. Raymond Obiajulu agrees that he has had full and fair representation by Professional Clerical and Miscellaneous Employees Local Union 995 at all stages of these proceedings.

Accepted and approved this 23rd day of January 2004.

FOR THE COMMPANY	FOR THE UNION
RAYMOND OBIAJULU	S S# 308 86 1784

D995/BW 0114

27 B

(Please Use Ball Point Pen and Print Firmly) FORM 363

RITE AID CORPORATION

EMPLOYEE WARNING NOTICE AND CORRECTIVE REVIEW

We have discussed the following corrective action with

NAME Raymond Doriajulu DEPARTMENT Pharmacy

STORE 10245 DATE 11/23/2004

E-1

1 NATURE OF VIOLATION: Check one or more. Explain below. If violation is not listed below, check OTHER and explain.

- ☐ Poor work performance
- ☐ Failed to report to work
- ☐ Excessive absenteeism
- ☐ Tardiness
- ☐ Called in too late to report an absence due to illness
- ☐ Overstayed rest breaks
- ☐ Loitering
- ☐ Poor attitude
- ☐ Insubordination
- ☐ Failed to phone in absence
- ☐ Refused to perform job function
- ☐ Discourteous to customers
- ☐ Discourteous to fellow employees
- ☐ Destruction of company property
- ☐ Violation of safety practices
- ☐ Refused to work overtime
- ☐ Unsatisfactory personal grooming
- ☐ Evidence of alcoholic drinking
- ☐ Excessive cash shortage/overage
- ☐ Repeated cashier errors

Violated Company Policy in:

- ☒ Making purchases
- ☐ Register procedure
- ☐ Controlling cash
- ☐ Punching time card
- ☐ Mistakening contact with store during illness
- ☐ Smoking ☐ Eating
- ☐ Drinking in forbidden areas
- ☒ OTHER conduct towards store mgr and district manager

2 EXPLAIN AND GIVE DETAILS: Raymond purchased some items during his employee discount on top of the sale price. Furthermore, he went back to his home store 0245 and, pointed it to the store mgrs face that he got sale prices and discount, after the store manager (our district manager's direction) had told Raymond he would not get the sale price and discount

3 DETAILS OF DISCUSSION AND PLAN OF ACTION: Raymond violated company policy as it pertains to employee purchases. His conduct was inappropriate towards the store manager, and DM. Raymond has been suspended without pay from 11/14/2004 until today. He will return to work on his scheduled day. This is a last and final warning that any violation of company policy will result in termination

SIGNED _____ SHOP STEWARD SIGNED _____ STORE MANAGER

SIGNED _____ EMPLOYEE DATE _____

SUGGESTED PROCEDURE

- The Supervisor, Store Manager or Assistant Store Manager or their representative should fill out the warning notice, completely.
- In completing the warning notice, be as specific as possible. For example: Cite the date, time, place and nature of the violation. If there is more than one violation at any one time, number your explanations of the violations to make this clear.
- After the warning notice has been filled out, speak to the employee in the presence of the shop steward. Explain the violation in detail. No employee may be reprimanded in public.
- If the violation is not cause for immediate discharge, set up a helpful plan of action with the employee so the violation does not happen again. Write the plan of action on the warning notice.
- Ask the shop steward and the employee to sign the warning notice.
- Pull apart all the copies. Give the white original to the employee for his records. Keep the yellow copy in the store files. Send the other 2 copies to the Personnel Office or to person handling personnel records.
- The Personnel Office or person handling personnel records will make note of warning notice and send the green copy to the Union.

WHITE COPY TO EMPLOYEE — PINK AND CANARY COPIES TO PERSONNEL OFFICE — GOLDENROD COPY TO STORE FILES OR TO PERSON HANDLING PERSONNEL RECORDS

D986/BW 0113

APPENDIX E

BEST AVAILABLE COPY

F-1

Letter to Professional, Clerical and Miscellaneous Employees Local Union 995, February 2nd, 2004

Raymond N Obiajulu
408 Madison Taylor Pl.
Las Vegas NV. 89144
Home Phone 702 233-4248

February 02, 2004

Mike Magnani
Secretary-Treasurer
Professional, Clerical and Miscellaneous Employees
Local Union 995
Fax: 702-385-4410

Dear Mr. Magnani:

Ref: My suspension from Rite Aid Pharmacy for buying Resin Chairs.

Due to the very poor/unsatisfactory representation I have received from the Union through Glenda Bassler-Watson in my case with Rite Aid with regard to my purchasing some resin chairs from Rite Aid, I hereby ask that you, the union, write me a letter excusing yourself from this case. I have decided to retain my own attorney at my own expense. I also ask that you furnish to my attorney any and all the information, whether verbal, written, and in whatever form, you have as regards this case. Please attend to this very urgent matter as soon as possible. Thank you for your cooperation.

VIA FACSIMILE AND HAND DELIVERY.

Sincerely,

_____

Raymond N Obiajulu D995/BW 0122

G-1

Memorandum Regarding Raymond Obiajulu Disciplinary Suspension

PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES LOCAL UNION 995
300 Shadow Lane • Las Vegas, Nevada 89106
702-385-0995 • Fax 702-385-4410

MIKE MAGNANI, Secretary-Treasurer
HELEN GREEN, President
TONY SASSO, Vice-President
GLENDA BASSLER-WATSON, Recording Secretary
Trustees, ED RUDD, JAMES F. DUNBAR, BRIAN VONDEROHE

February 5, 2004
Alan Keel
Human Resources Manager
Rite Aid Corporation
8532 W. Lake Mead Blvd.
Las Vegas, NV 89128

Ref: Raymond Obiajulu Disciplinary Suspension

Dear Mr. Keel,

Our office is in receipt of your February 3, 2004 memorandum concerning the aforementioned employee. In accordance with Article XVI Sections 2 and 3 of the current agreement between parties and by this memorandum Teamsters Local 995 wishes to grieve the disciplinary suspension issued to the grieveant as being issued without just cause. I would therefore request you to contact my office at your earliest convenience to discuss this matter in an effort to reach a mutually acceptable resolution to this problem.

The union would note that the employers February 3, 2004 memorandum to the grievant indicates the employer has completely investigated and determined that the appropriate level of discipline has been taken. That memorandum does not indicate what exactly the employer found through their investigation that the grievant did inappropriately to warrant the level of discipline issued. The grievant and union request that the employer in addition to returning the grievant to work make the grievant whole for all lost wages and benefits resulting from the company's actions.

Please contact my office at your earliest convenience so that all involved parties can meet for the purpose of discussing the company's actions, the company's proofs and the level of discipline taken.

Sincerely,

Glenda Bassler-Watson
Business Agent

CC Raymond Obiajulu

H-1

Memorandum Regarding Raymond Obiajulu Disciplinary Suspension

PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES LOCAL UNION 995
300 Shadow Lane • Las Vegas, Nevada 89106
702-385-0995 • Fax 702-385-4410

MIKE MAGNANI, Secretary-Treasurer
HELEN GREEN, President
TONY SASSO, Vice-President
GLENDA BASSLER-WATSON, Recording Secretary
Trustees, ED RUDD, JAMES F. DUNBAR, BRIAN VONDEROHE

February 23, 2004
Alan Keel
Human Resources Manager
Rite Aid Corporation
8532 W. Lake Mead Blvd.
Las Vegas, NV 89128

Ref: Raymond Obiajulu Disciplinary Suspension

Dear Mr. Keel,

In accordance with Article XVI Section 3 of the current Collective Bargaining Agreement between the parties the union is requesting the formation of an Adjustment Board to meet within 7 days of the company's receipt of this document.

It is the opinion of the union that the grievant was issued a disciplinary suspension without just cause. The Union will be seeking that the grievant be made whole for all lost benefits and wages that the grievant would have otherwise received had he not been disciplined.

At no point during the period of time in which the company suspended pending investigation and subsequently determined that the appropriate discipline for the grievant would be suspended pending investigation has the union been formally notified as to exactly why the grievant was disciplined or exactly what was found during the employers investigation determine that a disciplinary suspension was appropriate. The company's February 3, 2004 memorandum addressed to the grievant advises him in part, "This letter is to advise you that we have completed our investigation into the matter of your employee purchase. We have determined the appropriate discipline to be a suspension without pay through February the 8th, 2004." Which is very vague to say the least.

The grievant we understand, through employer comments, is accused of making an inappropriate purchase at the same time one of your store managers who certainly should have been aware of company policy didn't stop or question the purchase and one of the company's checker clerks rang up the purchase with both discounts. If this was a known company policy why is it that a store manager and a clerk were unaware that such a policy existed? In addition, the last document the grievant was required to sign concerning employee rules and regulations was the employee handbook which clearly states, in part, "after 14 days of continual employment you and your immediate family will be eligible for a 20% discount on items available at any Rite Aid store, including sale items." Based on that employee handbook which once again was the last document the grievant signed concerning this matter the grievant, the store manager in question, nor the cashier in question violated any company policy.

Please contact my office at your earliest convenience for the purpose of setting a date, time, and place for the Adjustment Board to meet.

Sincerely,

Glenda Bassler-Watson
Business Agent

CC Raymond Obiajulu

LEWIS N. LEVY, ESQ. (S.B.# 1987)
LEVY, STERN & FORD
3660 Wilshire Blvd., Suite 600, Los Angeles, CA 90010
(213) 380-3140

Attorneys for Defendant:
Teamsters Local Union No. 995

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA SOUTHERN DIVISION

Case No. CV-S-04-1329-KJD-RJJ

RAYMOND OBIAJULU,
Plaintiff,
vs.
PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, TEAMSTERS LOCAL UNION NO. 995 AND GLENDA BASSLER-WATSON
Defendants.

RAYMOND OBIAJULU,
Plaintiff,
vs.
RITE AID CORPORATION, a Delaware Corporation; TAMARA MOLINA, an individual, in her official and individual capacity; ALAN KEEL, an individual, in his official and individual capacity,
Defendants.

RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT TEAMSTERS LOCAL UNION NO. 995

PROPOUNDING PARTY: Plaintiff, RAYMOND OBIAJULU
RESPONDING PARTY: Defendant, PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, TEAMSTERS LOCAL UNION NO. 995
SET NO.: One
TO: PLAINTIFF RAYMOND OBIAJULU AND HIS ATTORNEY OF RECORD:

INTERROGATORY NO. 8:

Provide information regarding the results of all Defendant Union's Adjustment Boards with all other Rite Aid employees over the past five (5) years. Include in your answer the names of the employees involved, the name of the Defendant Union's representatives and business agents involved, the nature of the grievance and the decision of the Adjustment Board.

ANSWER & OBJECTION TO INTERROGATORY NO. 8:

Defendant Local 995 objects to Interrogatory No. 8 on the basis that said Interrogatory is vague, ambiguous, overly broad, and not calculated to lead to the discovery of admissible or relevant evidence. Without waiving the foregoing objection, Defendant Local 995 answers this Interrogatory as follows: As stated in its Answer and Objection to Interrogatory No. 4, above, the statute of limitations applicable to Plaintiff's DFR claims against Defendant Local 995 is six (6) months. Thus, the only probative matters, as to Defendant Local 995 processing other disciplinary related grievances against Defendant Rite Aid to a BOA an/or final and binding arbitration, are those that occurred within the six (6) months prior to BOA in March 12, 2004. Without waiving the foregoing, Local 995 responds as follows:

A) Hitendra Choksi: Discharge from employment; grievance filed December 26, 2002; parties conducted an initial grievance meeting on January 16, 2003, and agreed to treat that meeting as the BOA. As the parties could not reach agreement at the January 16, 2003, BOA, the matter was referred to final & binding arbitration. Arbitration hearing conducted on November 21, 2003; Arbitration decision issued May 6, 2004, which sustained

grievance and ordered reinstatement of Choksi. Documents identified: (1) December 26, 2002, grievance; (2) January 16, 2003, letter from Local 995 to Rite Aid referring matter to arbitration; (3) May 6, 2004, Arbitration Award.

B) Randall Kohl: Discharge from employment; grievance filed March 5,2003; parties conducted grievance meeting on April 7, 2003, and treated that as BOA. Since no resolution was reached at the April 7, 2003, BOA, the matter was referred to arbitration. The arbitration hearing was held on June 3, 2004; Arbitration opinion sustaining grievance and reinstating Kohl issued on August 30, 2004. Documents identified: (1) March 5, 2003, letter from Local 995 to Rite Aid forwarding grievance; (2) grievance dated February 21, 2003; (3) letter from Local 995 to Rite Aid dated April 14, 2003, forwarding matter to arbitration, and; (4) Arbitration Award issued August 30, 2004.

C) Edward Rafferty: Warning notice; grievance filed March 11, 2004; matter resolved at first step of grievance procedure (meeting held on May 19, 2004) with Local 995 and Rite Aid agreeing that discipline was properly issued but could not be used as the basis for further discipline if no further infractions committed by Rafferty within three (3) months of original warning notice. (1) Grievance of March 11, 2004, and; (2) July 5, 2004, letter from Local 995 to Rafferty confirming results of May 19, 2004, grievance meeting.

D) Obidke Theanacho: Discharge; grievance filed September 17, 2002; the matter was referred to a First Step Hearing on October 4, 2002, and as the parties reached no resolution of the matter they treated the October 4, 2002, meeting as a BOA and the matter was then referred to final and

binding arbitration. The arbitration hearing was conducted on September 23, 2003; Arbitration decision that denied the grievance and sustained the discharge of Mr. Theanacho was issued on or about December 17, 2003. (1) Grievance of September 17, 2002; (2) November 26, 2002, letter from Defendant Local 995 to Arbitrator Gerald McKay advising Arbitrator McKay of his appointment as arbitrator; (3) February 4, 2003, letter from Arbitrator McKay to Counsel for Defendant Local 995 and Counsel for Defendant Rite Aid confirming September 23, 2003, as the arbitration date, and; (4) Arbitration Award issued December 17, 2003.

INTERROGATORY NO. 9:

Provide information regarding each and every instance within the past ten (10) years where any bargaining unit member represented by Defendant Union has filed a grievance, reached the Adjustment Board stage, and the Union representative sided with the employer at that stage. Include in your answer the names of the employees involved, the name of the Defendant Union's representatives and business agents involved, the nature of the grievance and identify all documents pertinent to or leading to Defendant Union's decision not to support the interest of its bargaining unit member at the Adjustment Board phase.

ANSWER & OBJECTION TO INTERROGATORY NO. 9:

Defendant Local 995 objects to Interrogatory No. 9 on the basis that said Interrogatory is vague, ambiguous, overly broad, and not calculated to lead to the discovery of admissible or relevant evidence. Specifically, Defendant Local 995 objects to this Interrogatory as

it calls for response that is substantially over-broad, burdensome and harassing in that Defendant Local 995 has 39 Collective bargaining agreements other than one maintained with Rite Aid and literally thousands of grievances under these agreements have been filed under those agreements during the time referenced in this Interrogatory. Additionally, information about grievances brought under CBA's other than the one maintained between Defendant Rite Aid and Defendant Local 995 is irrelevant and not probative to the issues herein since (a) those other CBAs do not apply to the bargaining unit Defendant Local 995 represents at Defendant Rite Aid; (b) those other CBAs have different terms and conditions of employment than the one maintained between Local 995 and Rite Aid and (c) the grievance and arbitration procedures contained in those CBAs are different and distinct from that contained in the CBA between Defendant Local 995 and Defendant Rite Aid. Finally, Defendant Local 995 objects to this Interrogatory in that it seeks information that is overbroad and non-probative in that it seeks data far beyond the six (6) month statute of limitations that applies to DFR lawsuits. Without waiving the foregoing objection, Defendant Local 995 responds that Plaintiff's Grievance was the only instance in the six (6) months preceding the filing of this action in which a BOA, convened between Defendant Local 995 and Defendant Rite Aid, voted unanimously to deny a grievance.

DATED: October 6, 2005

By: _____
Lewis N. Levy, Esq.
Jeffrey R. Boxer, Esq.
Levy, Stern & Ford
Attorneys for Defendants, Local 995, Magnani and Bassler-Watson

Rite Aid Corporation Employee Handbook
Excerpt Regarding Associate Discount

Associate Discount

After 14 days of continuous employment, you and your immediate family will be eligible for a 20-percent discount on items available at any Rite Aid store, including sale items. This discount is not available for alcohol, tobacco, firearms, ammunition, Ticketmaster®, gift certificates, lottery, licenses, money orders, stamps, prescriptions covered by the Rite Aid Prescription Plan, or any other items excluded by law. For the purposes of this policy, "immediate family member" is defined as spouse, dependent children, and co-dependent family members with whom you reside. A Rite Aid discount card will be issued to you upon completion of 14 days of continuous employment. You should carry this card with you at all times in order to facilitate the discount process.

If you or an eligible family member returns merchandise purchased at Rite Aid using your discount card, you must let the store associate know that the returned merchandise was purchased with an associate discount card.

Rite Aid Corporation Employee Handbook
Receipt and Acknowledgment

Associate Handbook Receipt & Acknowledgment

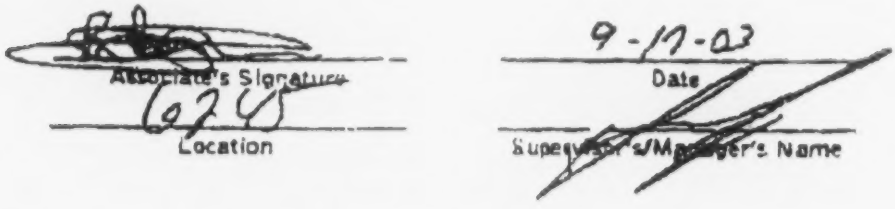
I, (print name) [illegible] acknowledge receipt of the *Rite Aid Associate Atlas*. I understand that I am responsible for reading the handbook and for knowing and complying with the policies set forth in the handbook during my employment with Rite Aid.

I further understand that the policies contained in the handbook are guidelines only and are not intended to create any contractual rights or obligations, expressed or implied. I also understand that the corporation has the right to amend, interpret, modify, or withdraw any of the provisions of the handbook at any time in its sole discretion, with or without notice. Furthermore, I understand that, because the corporation cannot anticipate every issue that may arise during my employment, if I have any questions regarding any of the policies or procedures, I should contact my manager, supervisor, or facility's human resources manager.

I understand and agree that my relationship with the corporation is "at will," which means that my employment is for no definite period and may be terminated by me or by the corporation at any time and for any reason, with or without cause or advance notice. I also understand that the corporation may demote or discipline me or otherwise alter the terms of my employment at any time at its discretion, with or without cause or advance notice.

I understand and agree that the terms of this acknowledgment may not be modified or superseded except by written agreement signed by me and an officer of the corporation, that no other associate or representative of the corporation has the authority to enter into any such agreement, and that any agreement to employ me for any specified period of time or under any terms or conditions inconsistent with what is contained within this handbook is unenforceable unless in writing and signed by me and an officer of the corporation.

My signature below indicates I have read and fully understand the policies, rules, and procedures contained in the *Rite Aid Associate Atlas*.



Raymond Obiajulu
408 Madison Taylor Pl
Las Vegas, NV 89144
03/29/04

Glenda Bassler-Watson
Local Union 995
300 Shadow Lane
Las Vegas, NV 89106
Fax 702-385-4410

Dear Glenda,

Ref: Adjustment Board meeting of 03/12/04.

It is hard for me to believe that you (the Union) have not had time to write me a letter summarizing the decision of the Adjustment Board stemming from the last meeting of 03/12/04 at the Rite Aid office as you promised me on that day (03/12/04) after the meeting, that you would write to me. You know, somehow I have felt as though you (the Union) are working with Roxann and Alan (Rite Aid) against me instead of forming a genuine team with me against Roxann and Alan in this case of my suspension from Rite Aid for purchase of resin chairs from Rite Aid.

Glenda, you told me on that Friday (03/12/04) that I would receive the letter by mid week the following week, and that the letter would also state that the Union will not take the case any further in my behalf since I disagreed (and still disagree) with the Adjustment Board decision — that I will be paid for only three (3) days of all the days I lost from work because, according to Jason "— I had the opportunity to sign the 'Settlement and Release' agreement on 01/23/04 and

return to work but did not sign it". When I called you one week after the meeting (on 03/19/04) to tell you that I had not received the letter, you told me that you had not had time to write it due to other commitments. But you told me that you will write it and that I will receive it middle of next week (i.e. the week of 03/21/04 to 03/27/04). Well, I did not receive the letter this past week.

I will like to inform you that if I do not receive the letter from you by 04/02/04 (Friday) I will take you (the Union) to court.

Thank you, Glenda.

{via FAX and MAIL}

Sincerely,
Raymond Obiajulu.

cc: Mr. Mike Magnani — Secretary-Treasurer Local Union 995.

P.S. I will like to inform you that my family still do not have health insurance as of today because I spoke with Mrs. Sam at Zenith Administrator this morning and she said that Rite Aid has not made the Health and Welfare contribution in my behalf for the month of January — the issue I raised during our 03/09/04 Adjustment Boarding meeting and Jason Gateley arrogantly trivialized and referred me to Zenith Administrator. So I have been treating myself and my family with over the counter remedies when I should have health insurance. I also have been postponing doctor visits for my family.

Received MAR 30 2004
D995/BW 0173

M-1

Memorandum Regarding the Adjustment Board Meeting

PROFESSIONAL, CLERICAL AND MISCELLANEOUS
EMPLOYEES LOCAL UNION 995
300 Shadow Lane • Las Vegas, Nevada 89106
702-385-0995 • Fax 702-385-4410

MIKE MAGNANI, Secretary-Treasurer
HELEN GREEN, President
TONY SASSO, Vice-President
GLENDA BASSLER-WATSON, Recording Secretary
Trustees, ED RUDD, JAMES F. DUNBAR, BRIAN VONDEROHE

March 24, 2004

Raymond Obiajulu
408 Madison Taylor Pl.
Las Vegas, NV 89144

Re: Adjustment Board Meeting

Dear Raymond,

Enclosed you will find the results of the Adjustment Board Meeting that was held on March 12, 2004 at the Rite Aid office.

At the end of that meeting they gave us their decision verbally and this is the written form of it for you. As you are aware this grievance can not be pursued any further because of the steps outlined in the bargaining agreement. With that in mind I will be closing my file on this issue.

If you have any further questions or I can help you in any other way, please feel free to contact my office.

Sincerely,

Glenda Bassler-Watson
Business Agent

D995/BW 0172

N-1

Letter Stating the Results of the Adjustment Board Meeting

ADJUSTMENT BOARD MEETING

Raymond Obiajulu; Professional Clerical and Miscellaneous Employees Teamsters Local 995
vs.
Rite Aid Corporation

On March 12, 2004, an adjustment board meeting was held pursuant to Article 16 subsection 3 to resolve a grievance dated January 16, 2004 filed by Raymond Obiajulu and Professional Clerical and Miscellaneous Employees Teamsters Local 995.

The parties were provided an opportunity to present any and all relevant information, documentation, and/or witnesses. The adjustment board then went into executive session and by unanimous decision it was determined to deny the grievance in its entirety.

As outlined in Article 16 subsection 3 this decision is final and binding.

This decision was made on March 12, 2004 by the adjustment board members listed below:

FOR THE COMPANY

Roger Cobaugh
PRINT NAME

FOR LOCAL 995

Jason Gajeley
PRINT NAME

D995/BW 0171

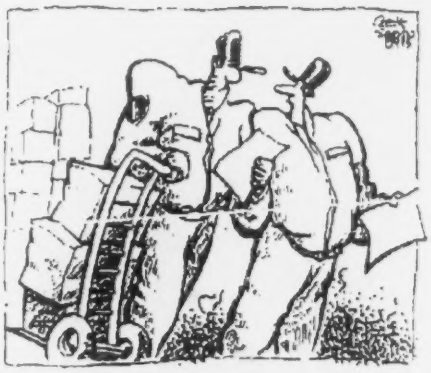
TEAMSTERS LOCAL 995

GENERAL MEMBERSHIP NEWSLETTER
NOVEMBER 10, 2004
MIKE MAGNANI SECRETARY-TREASURER
300 SHADOW LANE- LAS VEGAS, NV 89106
TEL. (702) 385-0995 FAX (702) 385-4410
WWW.TEAMSTERS995.COM

Important Dates:

➢**General Membership**
Tuesday
November 23, 2004
10:00 a.m. & 7:00 p.m.

➢**Shop Steward Training**
Thursday
December 2, 2004
9:00 a.m. & 7:00 p.m.



"I got a blank memo too. Management must have added another unwritten rule."

Inside This Issue:

- ✓ Secretary- Treasurers Report
- ✓ Hoffa Visits Local 995
- ✓ New Union Dental Office
- ✓ Florida Teamster Disaster Relief Fund
- ✓ Labor News from Around The Country

O-1

APPENDIX O

BEST AVAILABLE COPY

Excerpt of the Union's Newsletter Regarding Another Member's Grievance and Employer's Request for a Second Step-One Grievance Hearing

Arbitrator Decision

The Local Union recently received an arbitration decision concerning a disciplinary action an employer had taken under the employer's no-fault point system attendance policy. There were several issues commented on by the arbitrator when making his decision. And it is those interest points that we would like to share with you so your decisions as a Shop Steward or alternate Shop Steward are informed decisions when your coworkers call on you for some answers about what an employer is likely to prevail on when disciplining our members and what employers are not likely to prevail on.

In the case at hand, a member of this Local Union was charged with violating the company's no-fault attendance policy, which calls for automatic discipline according to the number of absences an employee incurs in a given period of time. According to this company policy; after five occurrences, an employee receives a verbal warning; after seven occurrences, written warning number one; after nine occurrences, written warning number two; after ten occurrences, a suspension and final notice; and after eleven occurrences, a termination.

In brief, in the step one grievance hearing the employer argued that a specific eleven violations were the violations the employer relied on to support the termination. The Union argued that at least three of the violations cited by the employer should have been dismissed because they should have been recorded

as excused under the Family Medical Leave Act. The employer refused to hear the Union's argument. The Union advanced its case to final and binding arbitration. After receiving the Union's request for final and binding arbitration, the employer contacted the union to request another step one hearing because they had found more missed days in a departmental file. The Union refused, saying the company had stated its case at step one and had no right to change its case by looking for more violations. "The employer is not permitted under the concept of just cause to change the reasons for discipline after the discipline has been imposed" said the arbitrator.

> "In light of the evidence in the record, it is the Arbitrator's opinion that the Employer did not have just cause to terminate the Grievant. The primary reason that the Employer did not have just cause relates to the fact that the Employer operated a no-fault attendance program without clearly identifying at each stage of the discipline process the occurrences upon which it was relying. When it got to the termination level, the Employer could not with any specificity, point to the eleven occurrences it wished to use, or point to additional occurrences beyond eleven. If the Employer intends to have a no-fault system, it must give employees at each stage the specific dates that it is using for imposing discipline so that employees can respond at that time in a timely manner to the imposition of discipline..."